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THE TELEGRAPHS OF THE BOND-AIDED PACIFIC RAILROADS.[1]

THE Pacific Railroad Acts of July 1, 1862, and July 2, 1864, subsidized or both chartered and subsidized certain railroad and telegraph lines between the Missouri River and the Pacific Ocean.[2] Congress appears to have contemplated nothing else than that the same corporations should perform both sorts of functions — that railroad and telegraph should be operated as one harmonious whole. No duality of agencies was so much as hinted at. The language of the acts is clear and unequivocal. The Union Pacific Railroad Company, *e.g.*, is "authorized and empowered to lay out, locate, construct, furnish, maintain and enjoy a continuous railroad and telegraph."[3] Further on in the same section this corporation is spoken of as the "Union Pacific Railroad and Telegraph Company." Lands are to be patented and bonds issued to this and the other companies aided by the acts, on the completion of

[1] This article had been accepted by the QUARTERLY, and the manuscript was in the hands of the author for final revision, when he lost his life by the sad drowning accident in Cayuga Lake, November 18, 1893. The solid qualities of which the study gives evidence reveal only too clearly the loss which science and scholarship have sustained in the writer's death at the very opening of his career. — EDS.]

[2] They were the Union Pacific, Bridge Junction, Omaha, Neb., to five miles west of Ogden, Utah, 1034.48 miles; Kansas Pacific, Kansas City, Mo., to a point near Boaz, Kan., 393.94 miles; Central Pacific, five miles west of Ogden to San José, Cal., 860.66 miles; Sioux City and Pacific, Sioux City, Ia., to Fremont, Neb., 101.77 miles; and Central Branch Union Pacific, Atchison, Kan., to Waterville, Kan., 100 miles.

[3] The words railroad and telegraph appear in connection in the act of 1862 nearly forty times.

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twenty-mile[1] sections of railroad and telegraph line. These bonds are to constitute a second[2] mortgage "on the whole line of the railroad and telegraph, together with the rolling stock, fixtures and property of every kind and description." A principal condition of the government grants of lands and credit to each aided line is that

> said company shall keep said railroad and telegraph line in repair and use, and shall at all times transmit dispatches over said telegraph line, and transport mails, troops and munitions of war, supplies and public stores upon said railroad for the government, whenever required to do so by any department thereof, and that the government shall at all times have the preference in the use of the same for all the purposes aforesaid (at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service).[3]

In the services to be rendered for the government it will be noticed that no distinction is made between the transmission of telegrams and the transportation of troops and commodities. One-half[4] of the compensation for these services is to be retained by the government and applied to the payment of the principal and interest of the bonds loaned the railroads. In addition, five per cent of net earnings is to be put to the same use.

No further examination of the acts of 1862 and 1864 is necessary to show that Congress in passing them had no intention of divorcing in any manner railroad and telegraph, or had even a thought that they would ever be divorced. They were divorced nevertheless. And it is the object of this article to tell the story of the divorce and of the attempts to re-wed

[1] "Forty" according to the act of 1862, but "twenty" by the act of 1864.

[2] "First" by the act of 1862, but "second" in that of 1864.

[3] Act of 1862, section six.

[4] The whole, according to the act of 1862, but changed to a half by the act of 1864. The Thurman Act, May 7, 1878, again directed the retention of the whole, one-half to be applied to interest payments, and one-half to be turned into the sinking fund created by the act. But the Thurman Act applies only to the Central Pacific and the Union Pacific Railroad Companies, not to the Kansas Pacific (now a part of the Union Pacific Railway) and the other bond-aided roads.

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them. Of the history which is common to both railroad and telegraph, and which might well be made to fill volumes, the essay will not treat. It will deal only with that which is peculiar to the telegraph, and with this only in its legal and governmental aspects.

I.

On the sixteenth of June, 1860, Congress passed an act[1] "to facilitate communication between the Atlantic and Pacific states by electric telegraph," which directed the secretary of the treasury to obtain for the government, by award to the lowest bidder or bidders, the use for a period of ten years of a telegraph line from the western border of Missouri to San Francisco. The maximum payment of $40,000[2] per year authorized by the act secured the speedy completion of the desired line.[3] By the autumn of 1861 telegraphic communication was established with the Pacific coast. It is this line of telegraph already in operation that is referred to in the nineteenth section of the act of July 1, 1862; the three companies there mentioned — the Pacific Telegraph Company, the Overland Telegraph Company and the California State Telegraph Company — being the builders of the line.[4] Although the act of June 16, 1860, declared that nothing therein conferred "upon the said parties any exclusive right to construct a telegraph to the Pacific," or debarred the government of the United States "from granting from time to time similar franchises and privileges to other parties," yet when the act of July 1, 1862, was under consideration in Congress, it was urged that the government, in locating and subsidizing a new Pacific tele-

[1] 12 Statutes at Large, 41.

[2] The state of California also granted a subsidy of $100,000.

[3] If the amount of business done for the government exceeded $40,000, the excess was to be certified to Congress by the secretary of the treasury; the expectation, of course, being that Congress would make an appropriation for it.

[4] These companies, however, were but the instruments through which the Western Union Telegraph Company worked. The contract for the construction of the Pacific telegraph was made by Hiram Sibley, president of the Western Union, at the direction and for the benefit of the Western Union, which corporation in time absorbed the companies mentioned.

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graph, was acting in bad faith toward the old telegraph, which would be ruined by the competition of the new; and it was therefore proposed to prohibit the latter from doing a general telegraphic business, and to restrict it to the transmission of railroad and government telegrams. But this proposal was rejected on the ground that competition was desirable. Nevertheless, section 19 of the act opened a way whereby competition could be avoided and harmony of interests secured. This section, which permitted the removal of the old telegraph to and along the line of the railroads, allowed the railroad companies, by arrangement with the owners of the old telegraph, to substitute it for the new one required by the act. But, though the old telegraph was removed to the line of the railroads, most of the railroad companies neglected to make use of this permission and built telegraphs of their own.[1]

In the act known as the "Idaho Act," to provide "increased facilities of telegraphic communication between the Atlantic and Pacific States and the Territory of Idaho," passed the same day as the second Pacific Railroad Act, July 2, 1864, Congress authorized the United States Telegraph Company to construct a line or lines of magnetic telegraph from the Missouri River to San Francisco. With change of names the provisions of the fourth section of this act are the same as those of the nineteenth section of the act of July 1, 1862. The telegraph line of the Kansas Pacific Railway[2] was constructed from the Missouri River to Lawrence, Kansas, by the same contractor who built that part of the railroad. For some fifty miles further west the line was continued by the United States Telegraph Company and the railroad company jointly, but under what exact arrangement was not disclosed. In February, 1866, this telegraph company was consolidated with the

[1] The Kansas Pacific and the Central Branch Union Pacific, comprising 494 out of 2,491 miles of bond-aided roads, were the only companies that did not build independent lines of telegraph.

[2] Spoken of in the act of 1862 as the Leavenworth, Pawnee and Western R. R. In 1863 its name became the Union Pacific Railway, Eastern Division, and by resolution of Congress of March 3, 1869, it finally became the Kansas Pacific Railway.

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Western Union; and the latter, with the railroad company, under an arrangement formulated in a contract of October 1, 1866, completed the telegraph line to Denver.[1]

This contract between the Kansas Pacific and the Western Union was drawn for twenty-five years and provided for the joint construction, maintenance and operation of the telegraph. By it the railway company was to have what wires were necessary for its own business, but all commercial business was reserved for the telegraph company. The Kansas Pacific agreed, so far as it could legally do so, to refuse right of way along its road to any other telegraph company than the Western Union, and to transport men and materials for any other company only at regular rates. The tenth section of the contract ran thus:

> The telegraph company agrees to perform without charge for the railway company what shall be decided by competent authority to be its telegraph obligations to the government of the United States.

The telegraph of the Central Branch Union Pacific Railroad was built under a contract made with the Western Union in 1867 that much resembled the contract between the Kansas Pacific and the Western Union; it provided for the joint construction and operation of the line, but the conduct of the business and the power of fixing rates were given to the Western Union.

"Finding the operation of a telegraph line only 100 miles long, when managed independently of other connecting lines, failed to give the public the proper telegraphic facilities,"[2] the Sioux City and Pacific Railroad, on April 1, 1871, for the sum of $6,420, transferred its telegraph rights to the Western Union, under a contract having the same essential features as those just described.

As has been said, the line of telegraph from the Missouri River to the Pacific Ocean, built under the act of June 16,

[1] U. S. *vs.* W. U. Tel. Co. *et al.*, 50 Fed. Rep. 28.

[2] From a letter of the general manager to the commissioner of railroads, January 28, 1884.

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1860, was moved to and along the right of way of the Central Pacific and Union Pacific Railroads. Prior to 1878 the Central Pacific and Western Union lines, though side by side, were operated independently of each other. But on the 14th of December, 1877, the Central Pacific, together with the Southern Pacific and a number of smaller companies likewise under the control of the Central Pacific, entered into an agreement with the Western Union "to unite their several telegraph lines and operate the same under one management and as one system." The contract was made to take effect January 1, 1878, and to continue in force five years, after which time it was terminable on a year's previous notice by either party. The Western Union agreed to pay in United States gold coin to the railroad companies $80,000 for the first year, $85,000 for the second year, $90,000 for the third year, $95,000 for the fourth year, and $100,000 for each year thereafter during the continuance of the contract, these payments to be divided among the railroad companies upon such a basis as they should agree on. Of this contract, which still governs the relations of the Central Pacific and the Western Union, it may be said that under the system of joint administration established by it each party is assigned its own proper duties, and that, like the other contracts between the Western Union and the bond-aided roads, it operates to throw the commercial telegraphic business into the hands of the Western Union.

The Union Pacific Railroad Company, like the other bond-aided roads, early divested itself of the full control of its telegraph line; but its arrangements were made, not with the Western Union, but with the Atlantic and Pacific Telegraph Company. In an original and a supplemental contract, of dates September 1, 1869, and December 14, 1871, the Union Pacific leased to the Atlantic and Pacific its telegraph lines and everything it had pertaining to the telegraph business, for the term of its charter and renewals thereof, subject to the rights of the United States as set forth in the charter of the railroad company, and on condition that the telegraph company would perform all the duties imposed upon the railroad

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company by its charter or by the laws of the United States. The Union Pacific received 17,800[1] shares of Atlantic and Pacific stock, which it subsequently disposed of for about $450,000. A sort of joint maintenance and operation of the telegraph was contemplated by the contract, its provisions, however, being such that the commercial business should all be done by or for the telegraph company.

II.

Thus matters stood with the bond-aided railroads and their telegraphs in January, 1880, the point at which the efforts of Mr. Jay Gould effected the consolidation of the Union Pacific Railroad Company, the Kansas Pacific Railway Company, and the Denver Pacific Railway and Telegraph Company into the Union Pacific Railway Company. Mr. Gould was in control of the Union Pacific and was also interested in the American Union Telegraph Company, which he had organized and for the business of which he was seeking western connections. Such connections were rendered impossible by the contracts of the bond-aided roads with the Western Union and the Atlantic and Pacific. These two companies were now working in harmony and were soon to be consolidated. The interests of the American Union could only be secured, therefore, by getting rid of the contracts. It was determined that the Union Pacific should resume the operation of its own telegraph lines, with a view to their employment for the purposes of the American Union. In accordance with this plan, President Eckert, of the American Union, on February 17, 1880, made a formal demand on the Union Pacific for exchange of telegraphic business on terms as favorable as were granted by the latter to any individual or corporation, basing his demand on the Congressional acts creating the railway companies. The counsel for the Union Pacific, Messrs. Sidney Bartlett and John F. Dillon,

[1] But 1,800 of them were for a debt owed by the Atlantic & Pacific to the Union Pacific.

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advised compliance with this demand. Their opinion declared that under the laws of Congress the contracts by which the telegraph business was turned over to other companies were void. The duties of the bond-aided corporations in respect to telegraph, as in respect to railway business, were by their charters personal, and hence inalienable without express legislative authority. Any contract devolving these duties on others was *ultra vires*.

The advice of its counsel was quickly followed by the Union Pacific, both on its main line and on the Kansas Pacific. Formal notice was served on the Western Union that the Union Pacific would itself operate and use its telegraph lines, "placing all companies and persons upon equal footing, giving equal rights to all, and exclusive or favored privileges to none." On the 27th of February, by taking possession of telegraph lines, cutting connecting wires and other drastic proceedings, expression was given of a purpose to terminate existing arrangements with the Western Union. The telegraph companies promptly secured temporary injunctions restraining the Union Pacific from carrying out its purposes, and in several cases the injunctions were made permanent. But a general and definitive settlement of the issues was never reached. For in 1881 the Atlantic and Pacific, the Western Union and the American Union companies were consolidated, their jarring interests were brought into harmony and litigation ceased.

The most important judicial opinion rendered during the continuance of this litigation was that of Judge G. W. McCrary, in the United States circuit court for the district of Nebraska,[1] on the motion to make permanent a temporary injunction against the Union Pacific. The principle which should determine as to the validity of the contracts whereby the Union Pacific leased its telegraph property and franchise to the Atlantic and Pacific, was to be found, Judge McCrary said, in the recent case of Thomas *et al. vs.* West Jersey Railroad

[1] Atlantic & Pacific Telegraph Company *vs.* Union Pacific Railway Company, 1 McCrary, 541; 1 Fed. Rep., 745.

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Company.[1] In that decision Justice Miller had declared that the charter of a corporation is the measure of its powers, and

that where a corporation like a railroad company has granted to it by charter a franchise intended in a large measure to be exercised for the public good, the due performance of those functions being the consideration of the public grant, any contract which disables the corporation from performing those functions — which undertakes, without the consent of the state, to transfer to others the rights and powers conferred by the charter and to relieve the grantees of the burden which it imposes — is a violation of the contract with the state, and is void as against public policy.

Proceeding to apply the principle here enunciated to the present case, Judge McCrary said: "It is certain that the contracts in question amounted to a lease or alienation, by the Union Pacific Railroad Company, of property which was necessary to the performance of its obligations and duties to the government and to the public." The act of 1862 and amendments thereof devolved on the Union Pacific, "individually and personally, the power and duty of constructing, operating and maintaining a line of telegraph as well as a railroad." This is manifest from the fact that the government endowed the corporation with large grants of land and bonds, and required reimbursement from the earnings of the railroad and telegraph. The words "maintain and enjoy," in the authorization "to lay out, locate, construct, furnish, maintain and enjoy a continuous railroad and telegraph," attest the personal and inalienable character of the powers granted and the obligations imposed.

Continuing, Judge McCrary said:

The very same language which authorizes the construction and operation of the telegraph line also authorizes the construction and operation of the railroad, and the property in the one is as necessary to the performance of the public duties of the corporation as that in the other. The charter of the company, with the amendments, considered as a whole, was manifestly intended to create a corporation which should be personally amenable to the government in the exer-

[1] 101 U. S., 71.

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cise of the powers conferred, and which should in quasi-public capacity perform the duties imposed, and render an account of its earnings. The purpose was not to authorize the construction of a line either of railroad or telegraph to be thereafter sold, leased or transferred to other parties, leaving the government to the chance of securing from or through the lessee or vendee its proportion of the earnings.

By its contract with the Atlantic and Pacific, the Union Pacific alienated property which was necessary to the performance of its charter duties to the public and the government, and the clause asserting that the property is still subject to the rights of the government, and requiring that the Atlantic and Pacific shall perform fully and faithfully all the duties imposed and to be imposed by the charter and by acts of Congress, does not make the contract good. The Union Pacific "certainly could not divest itself of these powers and duties and devolve them upon the plaintiff, without express authority from Congress." The contract, therefore, is *ultra vires* and void. This would be the case even if the agreement had not transferred property necessary to the performance of the obligations of the Union Pacific; for the attempt to alienate the telegraph franchise — the right to operate a telegraph line, to fix rates, to charge and collect tolls — would alone render the contract void.

But though an *ultra vires* contract is null and void, yet the rights already acquired under it must be respected. Accordingly, Judge McCrary held that the summary action of the Union Pacific was unlawful. That corporation must not of itself ruthlessly subvert existing relations. Though the contract is void, it is not permissible for one of the parties to set it aside without resort to law, and without regard to moral considerations. The preliminary injunction against the Union Pacific was accordingly confirmed, but with modifications authorizing the Union Pacific to institute legal proceedings "to cancel and set aside the said contracts upon a return of the consideration, and to settle and adjust upon principles of equity the accounts between the parties."

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The Central Branch Union Pacific, on taking possession of the telegraph along its route, at the same time instituted legal proceedings to have its contract with the Western Union declared void, and an account taken between the parties thereto. On an application for an injunction against the Western Union, heard in the United States court for the district of Kansas, May 8, Judge Foster, following the foregoing opinion of Judge McCrary, declared the contract between the Central Branch Union Pacific and the Western Union *ultra vires* and void. The Western Union, moreover, was enjoined from interfering with the railroad company's possession of the telegraph, on the ground that,

> this contract being absolutely void, and the plaintiff having taken peaceable possession of the property, accompanied with legal proceedings to have the contract declared null, and for an account to be taken between the parties, in my judgment the defendant cannot compel a restitution of the property under the contract pending the proceedings.[1]

On the Kansas Pacific Railway, now become the Kansas Division of the Union Pacific, the railroad company and the telegraph company had not, as on the main division of the Union Pacific, each built a separate telegraph line.[2] Here there was only one line, and to its construction both the railroad and the telegraph company had contributed.[3] Consequently the legal questions involved were somewhat different. The obligations of the Kansas Pacific and the Union Pacific (main line) to construct and operate a telegraph were the same under the acts of 1862 and 1864. But in the case of the Kansas Pacific another act of Congress, the so-called Idaho Act of July 2, 1864, was pertinent, and it was upon the fourth section of this act that the decision of the suits brought against the Kansas Pacific principally turned. Let us now consider these suits in detail.

[1] 1 McCrary, 556.

[2] The same was true of the Central Branch Union Pacific. *Supra*, p. 189.

[3] See contract, *supra*, p. 189.

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The action of the Kansas Pacific in taking possession of the telegraph along its line of railroad, February 27, 1880, came up for consideration before Judge Hallett, in the United States district court in Colorado.[1] The contention of counsel for the Kansas Pacific that the contract with the Western Union was void, as exceeding the powers of the company under the acts of Congress, was held by Judge Hallett to be wholly irrelevant. The Western Union had not acted "under or in pursuance of the authority given to the railway in respect to telegraph lines," but under the authority of its charter as a New York corporation. Moreover the Kansas Pacific might legally make such a contract with the Western Union or with any number of telegraph companies. And the contracts would be valid and enforceable; for they were apart and aside from the obligations of the Kansas Pacific to the government in respect of a telegraph line. The question of those obligations was not involved in this suit.[2] The validity of the contract must be assailed on other grounds. That provision of the contract which gave the Western Union the exclusive right of way along the Kansas Pacific was in contravention of the act of Congress of July 24, 1866, granting to every telegraph company chartered by a state the right of way along all railroads of the United States. Here, then, was a weak point; but the whole contract was not thereby invalidated. The provision in the contract which in the opinion of Judge Hallett rendered the whole instrument void was that which declared that the personal messages of executive officers of the railroad company should be transmitted partly or wholly free of charge. The Kansas Pacific undoubtedly had the right to rescind the contract on this ground. "But," said the court, "rescission does not mean that either party may appropriate to its own use the joint property of both, acquired under the contract, without pay therefor." The rights of each party acquired pursuant to the contract must be respected. The forcible seizure of the

[1] 4 Fed. Rep., 284–292.

[2] How divergent this opinion is from the opinion of Judge McCrary in Atlantic & Pacific *vs.* Union Pacific, it is unnecessary to point out.

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telegraph lines was as illegal as if the contract were without objection. The court, therefore, granted the injunction.

Only a part of the Kansas Pacific Railway, and that a minor part, is situated in Colorado, while the major part, including all of the bond-aided portion,[1] lies in Kansas. And it was in this state that the attempt of the railroad company to set aside the contract with the telegraph company occasioned the most litigation. An injunction against the Kansas Pacific having been obtained in a state court, and that court having refused to dissolve it, the case was removed into the United States circuit court for the district of Kansas. Here District Judge Foster overruled an application to dissolve the injunction. A similar application was made to the same court in session before Judges McCrary and Foster, June, 1880.[2] Judge McCrary held that, though the Kansas Pacific was not created by the Pacific Railroad Acts, but had been originally chartered by the legislature of Kansas, yet by accepting those acts and receiving their benefits it had become subject to all the terms and conditions imposed by them. In its contract with the Western Union the Kansas Pacific had virtually divested itself of the right to do telegraphic business for the public. In accordance with the decision in Atlantic and Pacific *vs.* Union Pacific this contract, therefore, was *ultra vires* and void so far as the acts of 1862 and 1864 were concerned. Hence the Western Union must find some other ground to stand on. This was found in the Idaho Act. It was claimed by counsel for the Western Union, though not averred in the bill, that the Western Union was the assignee and successor of the United States Telegraph Company, whose telegraph the fourth section of the Idaho Act permitted the bond-aided roads to substitute for the telegraph which they themselves would otherwise have to build; and that as such it had a right to be on the Kansas Pacific. Judge McCrary said that he did not have the data on which to found an opinion as to the claim of the Western Union to be the successor of the United States

[1] The company received land grants for the whole length of its road.

[2] W. U. Tel. Co. *vs.* U. P. Railway Co., 1 McCrary, 418; 3 Fed. Rep., 1.

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Telegraph Company; but, assuming the claim to be true, he held that the contract in question between the Western Union and the Kansas Pacific was authorized by the Idaho Act.[1] But neither this nor any other act could warrant the provision for the free transmission of messages for the executive officers of the railroad company. That provision would invalidate any contract, since it tainted the contract with immorality, by virtually offering the executive officers of the company a bribe to give their consent to it. Equitable relief could not be claimed under an immoral contract: the parties must be left where the court found them. The Western Union would have to show a better right to retain possession of the telegraph line than this contract. It was accordingly given leave to file an amended bill, the injunction being continued for the meantime. Judge Foster did not express an opinion on the Idaho Act, but concurred with Judge McCrary that aside from that act the contract was void both as being *ultra vires* and as being immoral.

In pursuance of the leave given by Judge McCrary, the Western Union filed an amended bill, designed to show a right to retain possession of the telegraph line on the Kansas Pacific despite the vicious clause in the contract.[2] It was averred that the United States Telegraph Company had built and was operating nearly one hundred miles of telegraph on the Kansas Pacific, and was engaged in building more, when its right so to do passed by assignment to the Western Union. Judge McCrary was convinced that the averment showed these rights so to have passed.[3] Besides the property in the telegraph line obtained from the United States Telegraph Company prior to the contract with the Kansas Pacific, the Western Union had, according to the allegations of counsel, expended large sums on the line since the making of the contract. And thus in these

[1] Judge McCrary rejected the view that the fourth section of the Idaho Act relieved the railroad companies only of the construction and not of the operation of a telegraph line.

[2] W. U. Tel. Co. *vs.* U. P. Railway Co., *et al.*, 1 McCrary, 558; 3 Fed. Rep., 423.

[3] He did not share in the opinion that the privileges of the United States Telegraph Company conferred by the Idaho Act were personal and inalienable, and consequently unassignable to the Western Union.

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two ways Judge McCrary thought the Western Union had acquired equitable rights in the property which a court might not overlook. But, as to that portion of these rights which had been acquired under the contract, it is evident that Judge McCrary was at variance with his former opinion that, since the parties to an immoral contract could not claim equitable relief, the court must leave them where it found them. The result of this hearing was that Judge McCrary continued the injunction, but granted permission to the defendants to answer if they saw fit.

The last hearing in these injunction proceedings was had before Judge McCrary and Justice Samuel F. Miller, October 1, 1880, Justice Miller delivering the opinion.[1] The opinion in the main agreed with the opinions of Judge McCrary delivered on previous hearings. Justice Miller, like Judge McCrary, thought that the obligation in respect to telegraph business imposed by the Pacific Railroad Acts was inconsistent with the contract involved in this case, and that the only firm footing for the plaintiff was afforded by the Idaho Act. He did not, however, accept as conclusive the evidence offered concerning the corporate existence of the United States Company and the succession of the Western Union to its rights. But his doubts here were not so strong as to justify a decision adverse to the Western Union. As to the effect of the clause giving free transmission to despatches of the executive officers of the Kansas Pacific, he was not so sure that it tainted the contract with immorality. The term executive officers itself was ambiguous; the presumption of corrupt motives, which the attempt to conceal this clause from the stockholders or from others interested would create, was wanting; "the benefits secured did not flow to the individual, but to the office"; and there was no evidence before the court that the privilege "was enjoyed for any length of time by any one individual, or that it amounted in point of fact to a pecuniary sum whose influence would be at all appreciable."

Justice Miller dwelt upon the disastrous consequences that would ensue if the two injunctions covering, respectively, the

[1] W. U. Tel. Co. *vs.* U. P. Railway Co., *et al.*, 1 McCrary, 581; 3 Fed. Rep., 721.

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lines of telegraph from Kansas City to Denver and from Omaha to Ogden, were dissolved at the behest and for the benefit of a rival company. The Western Union, he said

> has done the business of almost the entire country for many years past west of the Allegheny Mountains — all the business west of the Missouri River. . . . The total suspension of its business for the period of time necessary to construct a line from Omaha or Kansas City to Ogden would produce an irreparable injury, within the meaning of the term as used in equity proceedings. It would be an injury to that company by no means commensurate with any good to result to the other company which is in contest with it. . . . I have a strong belief that it is the duty of the court to keep the hands of both of these parties so tied up, and so far at liberty only as that the public shall not suffer and each shall not destroy the other, until this litigation shall come to a final close by a full hearing on the merits of the case.

The "full hearing" was never held; for, as has been stated,[1] the litigation was ended by the consolidation of the three telegraph companies.

III.

On the first of July, 1881, a contract was entered into between the Western Union and the Union Pacific that superseded the several contracts which had heretofore governed the relations of the two corporations. The Central Branch Union Pacific was also covered by this contract.[2] As this instrument is the most important of those by which the relations of the bond-aided roads to their telegraphs are regulated, its provisions may be given with some fullness.

It is declared in the preamble that the purpose of the contract is to terminate existing disputes and litigation, and it is agreed that all liabilities under the old contracts are to be released, and all suits dismissed, at the conclusion of the new. The Union Pacific grants to the Western Union, "so far as it legally may," the exclusive right of way along and under its

[1] See *supra*, p. 192.

[2] The bond-aided lines constitute only a part of the railroad mileage covered by this contract.

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roads and bridges, and agrees not to "furnish for any competing line any facilities or assistance that it may lawfully withhold." The Western Union is guaranteed the use of the railway company's depots and stations as against any other telegraph company, and the employees of the Union Pacific are forbidden to work for or have any connection with any other telegraph company. The claims of the Western Union under the nineteenth section of the act of July 1, 1862, and the fourth section of the Idaho Act are not admitted by the Union Pacific, and the contract provides that during its continuance they are to remain in abeyance.

For the maintenance and extension of existing telegraph lines along the railroads of the Union Pacific system, and for the construction and maintenance of new lines of telegraph along extensions of the railroads of the system, the railway company is to supply all the labor except a foreman, and the railway company and the telegraph company are to share equally the cost of poles, wires, insulators and other material. This arrangement, however, extends only to the erection of three wires for the exclusive use of each party between Council Bluffs and Ogden, two between Kansas City and Denver and one on the other roads of the system. If either party wishes more wires, it must erect them wholly at its own expense. The telegraph company is to furnish the instruments, batteries, blanks and stationery for public business, and the railway company is to afford free freight transportation for telegraphic materials and supplies, and free passenger transportation for officers of the Western Union traveling on the company's business and for all employees of the Western Union traveling on business concerning the telegraphs along the Union Pacific. The telegraph business of the Union Pacific beyond its own lines the Western Union agrees to do without charge to the amount of $25,000 per year for the first 3400 miles of railroad owned or controlled by the Union Pacific and occupied by telegraph lines under the provisions of this contract, and to the amount of six dollars per year for every additional mile of railroad so owned or controlled and occupied.

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Business in excess of this shall be paid for at half commercial day rates. Besides, the Western Union agrees to give the Union Pacific, for corporation purposes, the use of a wire from Omaha to Kansas City, connecting with the Union Pacific stations along the way. The payment of all taxes on telegraph property owned by either party is assumed by the Western Union. Both parties may retain their present telegraph offices, and either party may establish as many new offices as it wishes, subject to the following conditions: If the Western Union has no office in a given place and the railroad company has one, the Western Union may not establish another within a mile of the railway company's office without the consent of the railway company. If, however, the telegraph business of this locality is confined to the mile limit and the railway company's service is not satisfactory, the Western Union may enter the limit with an office of its own, if the consent of the arbitrators to whom the matter shall be referred can be obtained.

The railway company agrees that its employees shall not compete with the telegraph company's offices in the transaction of commercial telegraph business at any point where the telegraph company may now or hereafter have an office separate from the railway company's office, by cutting rates or by active efforts to divert business from the telegraph company.

A superintendent of all the telegraph lines on the Union Pacific, whether owned by railway or telegraph company, is to be "appointed and paid jointly," with the expectation that he will endeavor to serve and harmonize the interests of both parties. In fact,

it is mutually understood and agreed that all of the telegraph lines and wires covered by this contract, whether belonging to or used by the telegraph company or the railway company . ... shall form part of the general system of the telegraph company.

The preamble recites as one of the purposes of the contract that of

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fulfilling the obligations of the railway company to the government of the United States and the public in respect of the telegraph service required by the act of Congress of July 1, 1862, and the amendments thereto.

And with a very obvious reference to the ground of unfaithfulness to charter obligations on which the superseded contracts had been declared void, the new instrument provides that the railway company shall transmit, at rates fixed by itself, all commercial messages presented at its offices. One-half of the receipts of such business, however, are to be turned over to the Western Union. The provision that the Union Pacific shall fix its own rates would seem to apply only to the main line between Council Bluffs and Ogden; but the provision is of little importance, since the Union Pacific is bound by the contract not to cut rates.

This contract is drawn for twenty-five years, but it cannot be terminated at the end of that time, or even at a later date, except by a year's previous notice. Disputes as to its true intent and meaning are to be settled by arbitration. If the Union Pacific fails to keep this contract, then the superseded contracts with the individual roads shall again come into force.

The validity of this new contract became a subject of legislative consideration, when a new rival of the Western Union, the Baltimore and Ohio Telegraph Company, began to seek connections beyond the Missouri River. Now, however, in distinction from the situation when the American Union had the same design, the Union Pacific Railway was favorable to the Western Union's monopoly. The matter on this occasion never got into the courts, but was settled, as in the earlier case, by consolidation of the telegraph companies. Before the settlement was reached, however, the general subject of the relation of the bond-aided roads to their telegraphs had undergone considerable investigation.

In consequence of a resolution of the United States Senate, passed February 20, 1885, asking for information as to the telegraphic business of the bond-aided roads, the commissioner of railroads gave a hearing, February 27, to representatives of

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the corporations interested.[1] A year later, February 26, 1886, the House of Representatives passed a resolution empowering the committee on post-offices and post-roads

> to ascertain whether additional legislation is needed to prevent a monopoly of telegraphic facilities; to secure to the Southern, Western, and Pacific States the benefits of competition between the telegraph companies; and to protect the people of the United States against unreasonable charges for telegraphic services.

The committee conducted an investigation in March and April and made a report to the House on the 22d of the following December.[2] The testimony taken was quite voluminous, but it was almost all given by counsel and officers of the Union Pacific, the Western Union and the Baltimore and Ohio. In fact, the controversy between the rival telegraph companies was the source both of the hearing before the commissioner of railroads and of this investigation by the House committee. Nevertheless, valuable information was brought out concerning the telegraph of the Union Pacific, and some light was thrown on the legal aspects of this company's relations to the government and to the Western Union.

The difficulties of the Baltimore and Ohio arose from the fact that the Western Union refused to take its business to points beyond the Missouri at less than the regular rates to individual customers. But access to the western territory under conditions that would admit of competition with the Western Union would be gained, if the bond-aided roads could be induced or compelled to make traffic arrangements with the Baltimore and Ohio for an exchange of general telegraph business on the same terms and conditions as to rates, accounts and mechanical connections as were enjoyed by the Western Union. Accordingly, the Baltimore and Ohio demanded such arrangements for itself,[3] but the Union Pacific refused to make them, maintaining that its duty to the Baltimore and Ohio was only its duty to an individual customer.

[1] Senate Ex. Doc., 48th Cong., 2d sess., No. 105.
[2] House Reports, 49th Cong., 2d sess., No. 3501.
[3] *Ibid.*, pp. 251–257.

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The Baltimore and Ohio based its claim to equal treatment with the Western Union, first, on the fifteenth section of the act of July 2, 1864. This section required the companies

to operate and use said roads and telegraph for all purposes of communication, travel and transportation, so far as the public and the government are concerned, as one continuous line; and in such operation and use, to afford and secure to each equal advantages and facilities as to rates, time and transportation, without any discrimination of any kind in favor of the road or business of any or either of said companies, or adverse to the road or business of any or either of the others.

Discussion made clear, and the counsel of the Baltimore and Ohio were compelled to admit, that the obligation here imposed applied to the bond-aided roads and telegraphs only as among themselves, and not in their relations to outside roads and telegraphs. Discrimination within the meaning of this prohibition had arisen in years past, but none such was complained of now. Neither was it claimed that the further requirement of the section — to receive and transmit all messages of like character by whomsoever offered — had been violated.

It being admitted that the statute did not require the bond-aided telegraphs to form continuous through lines with every connecting telegraph, a decision of the United States Supreme Court was cited to show that there was no such requirement by common law.

At common law a carrier is not bound to carry except on his own line, and we think it quite clear that if he contracts to go beyond, he may, in the absence of statutory regulations to the contrary, determine for himself what agencies he will employ. His contract is equivalent to an extension of his line for the purposes of the contract, and if he holds himself out as a carrier beyond that line, so that he may be required to carry in that way for all alike, he may, nevertheless, confine himself in carrying to the particular route he chooses to use. He puts himself in no worse position by extending his route with the help of others, than he would occupy if the means of transportation employed were all his own. He certainly may select his own agencies and his own associates for doing his own work.[1]

[1] D. & N. O. R. R. *vs.* A. T. & S. F. R. R., 110 U. S., 667.

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That is, the duties of the Union Pacific as a common carrier in the transmission of telegrams were confined strictly to its own lines. In the matter of telegrams whose routes lay only partly over its lines it could make arrangements with the Western Union for their joint dispatch. And the Baltimore and Ohio could not as of right demand that such arrangements be made with it also.

The second point made by the Baltimore & Ohio as a basis for its demands was the alleged illegality of the contract of 1881 between the Union Pacific and the Western Union. This contract, it was held, was of a kind with the contracts which it superseded. These contracts had been declared void by the courts in 1880. Further adjudication was, therefore, unnecessary. All that was needed was a Congressional resolution requiring the Pacific roads to maintain and operate their telegraph lines themselves, and directing the railroad commissioner and the attorney-general to see that they did it.

The conclusions of the committee on post-offices and post-roads were highly unfavorable to the Pacific Railroad telegraphs. In its report to the House of Representatives, the committee held that the lines were not operated as was contemplated in the aiding acts, and that the companies, by their arrangements with the Western Union, had impaired the lien of the United States on their property, and at the same time had prevented the public use of their lines. Public use was the necessary implication from the fact that the government had aided in the construction of the lines.

> The principle that governs the public use of any right or privilege is that it shall be equal for all and without discrimination. Equal privileges and equal facilities are fundamental conditions in the public use of anything. . . . In order that equal facilities may be extended to all and discrimination prevented, it becomes necessary, not only that individuals should be granted equal facilities, but that equal rights and facilities should be extended to connecting railways and connecting telegraph lines.

Whence it followed that those who reached the Pacific roads over the Baltimore and Ohio were discriminated against, as com-

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pared with those who reached them over the Western Union.[1] In pursuance, therefore, of the government's duty "to see that the terms and conditions upon which the grants of public aid were made are fulfilled," the committee submitted and recommended for passage a bill, of which the following were the principal requirements:

(1) That all railroad companies to which the United States had granted any subsidy in lands or bonds or loan of credit for the construction of either railroad or telegraph lines, and all companies engaged in operating said railroads, should

forthwith and henceforward, by and through their own respective corporate officers and employés, construct, maintain and operate for railroad, governmental, commercial and all other purposes, telegraph lines, and exercise by themselves alone all the telegraph franchises conferred upon them and obligations assumed by them under the acts making the grants as aforesaid.

(2) That all telegraph companies which had accepted the provisions of the act of July 24, 1866, should be permitted to connect their lines with the telegraph lines of the government-aided railroads for the interchange of business, and should without discrimination be accorded the same terms and facilities therefor.

(3) That the attorney-general, in order to secure the lien of the United States upon the bond-aided Pacific telegraphs, and "to have the same possessed, used and operated" in conformity with the acts of Congress concerning them, should "by proper proceedings" enforce and defend the rights and equities of the United States in said telegraphs; that he should "legally ascertain and adjudicate" the rights of third parties therein; and finally, that he should have all illegal and *ultra vires* contracts made by the companies annulled.

The enforcement of the first and second requirements was entrusted to the commissioner of railroads, who, on complaint of their violation, was directed to ascertain the facts and

[1] This latter conclusion of the committee is obviously in direct conflict with the opinion of the Supreme Court cited above.

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report them to the secretary of the interior. When the decision of the secretary was made, the commissioner was to carry it out, employing, if necessary, mandamus or other legal process. In addition, for failure or refusal to observe these requirements, the aggrieved party might prosecute the offending official by penal suit, and the company itself by civil suit.

Section seven of the act required the making of certain reports to the commissioner of railroads : first, reports within sixty days on the telegraph property along the government-aided railroads and on all contracts and agreements respecting the same ; and, secondly, annual reports on the condition, value and earnings of the telegraphs.

This measure, known as the Anderson Bill, was not acted upon by the Forty-ninth Congress. It was taken up and passed, however, by the succeeding Congress, and became law on the 7th of August, 1888. In but a single point of consequence did the final form of the bill differ from its original provisions : the duties which were at first assigned to the commissioner of railroads and the secretary of the interior were ultimately devolved upon the Interstate Commerce Commission, and this body was authorized to institute inquiries upon its own motion as well as upon complaints laid before it. A considerable opposition to the bill was developed during its discussion. Objection was made to the measure, first, as unwise, and second, as unconstitutional. As unwise, because the abrogation of the contract with the Western Union and the operation of its telegraph by the Union Pacific itself would decrease its earnings from this source, which decrease would issue in loss to the government, its largest creditor. As unconstitutional, because the contract was legal, having been made under section 19 of the act of 1862, and what had been acquired under it possessed all the sacredness of vested rights. On the other hand some sentiment favorable to government ownership of the telegraph, founded on a just conception of the nature of monopolies, was disclosed by the debate, while again the common fear and hatred of monopolies were conspicuous. These latter feelings

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found much nourishment in the fact that, after the introduction of the bill in the Forty-ninth Congress, the Baltimore and Ohio Telegraph Company, to whose influence had been due the investigation leading to the bill, had succumbed to the Western Union and had been absorbed by it. It was argued that if the Anderson Bill had been on the statute-book, this extinction of competition would not have taken place.

It would seem in the light of the judicial interpretation of the Pacific Railroad laws found in the decisions reviewed above, that the only new law made by this act, the only new rights created and obligations imposed (with some obvious minor exceptions), are contained in the requirement that any telegraph company which has accepted the provisions of the act of July 24, 1866, on extending its line to meet the line of a government-aided railroad, shall be permitted to form connections and interchange business with the latter; and that, on terms as favorable as are extended to any other telegraph company. As we have seen, this is a statutory and not a common law obligation.[1] Having been imposed by act of Congress, its fulfillment now becomes incumbent on the railroads.

IV.

Is the Anderson Act observed? What are its results? The first question may be answered with a general negative. The very limited and partial extent to which the act has been observed will appear as we proceed. Its chief result up to the present has been the bringing of suits by the attorney-general to compel its observance. The issue of these suits is still in doubt; for although the government has been successful so far, it will require the verdict of the higher courts to settle them definitively. As to the requirements of the act in regard to the making of reports to the Interstate Commerce Commission, these have not, on the whole, been complied with. In fact, as a rule, the railroad and telegraph companies ignore the requests

[1] *Supra*, pp. 205, 206.

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of the commission for reports.[1] Nor has the commission been called upon to exercise its investigating powers. In its third annual report the commission said that it had never received either an application to make an investigation or a complaint against any subsidized company for refusing connection with other companies,

except a communication in the nature of a complaint from Albert B. Chandler, President and General Manager of the Postal Telegraph and Cable Company, in September, 1888. This led to a correspondence and inquiry which continued for some months, but no formal complaint or application followed.

The incident last referred to by the commission was connected with proceedings which brought before the courts the relation of the Union Pacific's contract of 1881 to the Anderson Act. Between November, 1888, and February, 1889, Mr. Chandler made application to the Union Pacific to enter into a traffic arrangement, whereby the wires of his company should be connected with the telegraph offices of the Union Pacific at Omaha and Kansas City, and an interchange of business made on through rates properly apportioned between the parties. But, as the Baltimore and Ohio had failed before, so the Postal failed now to secure such an arrangement, the Union Pacific pleading an injunction secured by the Western Union to restrain it from observing the Anderson Act.

On the 9th of November, 1888, President Green, of the Western Union, addressed a communication to President Adams, of the Union Pacific, in which he said: "I deem it my duty to inform you that this company is advised that its contract with your company, dated July 1, 1881, embodies rights which exclude that contract from the operation of [the Anderson Act]." He therefore insisted that the Union Pacific take no steps in derogation of that contract, "except as the result of proceedings in mandamus" provided

[1] See Third Annual Report of the Interstate Commerce Commission, pp. 35–38; Fourth Annual Report, p. 49; Fifth Annual Report, p. 10; Sixth Annual Report, p. 67.

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for in the third section of the Anderson Act. President Adams replied that it was not for his company, in the face of an express mandate of Congress, to assume the existence of a superior binding power in the contract of July 1, 1881; that it would obey the Anderson Act "until otherwise directed by judicial determination . . . notwithstanding the existing contract"; and that it would not "await the result of mandamus proceedings." With the purpose of exercising "by itself alone all the telegraph franchises conferred upon it," the Union Pacific now proceeded, whether sincerely or not, to get ready to do a general telegraph business for the public. Blanks were to be prepared, batteries and appliances provided and additional wires strung, if necessary. The continuance in office of the joint superintendent provided for by the twelfth section of the contract with the Western Union being deemed a violation of the Anderson Act, he was removed and re-appointed superintendent of the telegraph system of the Union Pacific alone. How much further the Union Pacific might have gone in the effectuation of its professed purpose, cannot be known; for on February 14, 1889, an injunction was granted the Western Union by the circuit court for the district of Nebraska, restraining the Union Pacific from obeying the Anderson Act to the subversion of the contract of 1881. Application has never been made to dissolve this injunction. Indeed, in the bill filed by the United States against the Western Union and the Union Pacific in the suit which we are now to take up, it was charged that the injunction was the result of collusion between the two companies to escape compliance with the Anderson Act. But the charge was denied.

Pursuant to the fourth section of the Anderson Act, the United States, on September 17, 1889, brought suit in equity in the circuit court of the United States for the district of Nebraska, against the Western Union Telegraph Company and the Union Pacific Railway Company,[1] to have the contract of July 1, 1881, between the defendants canceled and annulled, and to oblige the Union Pacific to assume itself the full exer-

[1] 50 Fed. Rep., 28.

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cise of its telegraph franchise. March 30, 1892, Justice David T. Brewer delivered an opinion favorable to the complainant. In accordance with this opinion, a decree was entered,[1] of which the important points are as follows :

(1) The contract of July 1, 1881, between the Western Union and the Union Pacific is annulled ; likewise that of September 1, 1869, and that of December 14, 1871, between the Union Pacific and the Atlantic and Pacific ; and that of October 1, 1866, between the Union Pacific Eastern Division (Kansas Pacific Railway) and the Western Union.

(2) The Union Pacific is directed to resume possession of all the telegraph property belonging to it situated on those of its lines, main and branch, which were aided by the government under the Pacific Railroad Acts ; to maintain and operate the same through its own officers and employees "for railroad, governmental, commercial, and other purposes"; and "in all ways [to] exercise by itself alone all the telegraph franchises conferred upon it and obligations assumed by it" under the aforesaid acts, making no discrimination whatever as between ordinary patrons or as between connecting telegraph lines.

(3) The Western Union is ordered to vacate the offices of the Union Pacific and, until further order of the court, to remove nothing that has been used jointly or that is the subject of disputed ownership or difficult of identification or necessary to the railway company in the discharge of its enjoined duties ; it being provided, however, that the railway company may lease to the telegraph company such poles along its right of way and such space in its depots and stations as it does not need itself.

(4) Finally, the decree grants an appeal and provides for its own supersession pending such appeal, on the filing of bonds by the defendants.

The appeal granted by the last provision of the decree is now pending in the United States circuit court of appeals for the eighth circuit.

[1] Oct. 11, 1892.

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An extended review of the suit is unnecessary, since much of the ground gone over has been covered by this article already. Justice Brewer's opinion does not traverse the opinions delivered by Judge McCrary and Justice Miller in the litigation twelve years before, except as to the competence of the United States Telegraph Company to transfer to the Western Union the franchise granted to it by the Idaho Act to build a telegraph line to the Pacific. This competence was not called in question in the earlier case, the court seeming concerned only about matters of fact. Justice Brewer, on the contrary, accepts the fact of transfer, probably because of fuller knowledge, but denies the competence.

> The privilege given by the Idaho Act [he says] was personal to the United States Telegraph Company. It was not to it and its assigns, or to it and its successors. The general rule is that the grant of a franchise of a public nature is personal in its character and incapable of transfer, without the sanction of the government making the grant, to any other person or corporation. It creates a contract between the government and its grantee, and on the part of the latter carries with it the obligation that it will personally discharge the duties and exercise the rights of the franchise.

To the argument that Congress must have known that the New York law permitted the consolidation of corporations,[1] and that it "therefore impliedly consented to any such subsequent transfer of the franchise . . . to any company into which the United States Telegraph Company might lawfully be consolidated," Justice Brewer replies that the argument has force when the thing transferred is tangible property, but not when it is intangible property: ". . . there is an element of personality of obligation in a franchise which is not found in a grant of tangible property." Furthermore, the designation of the Idaho Act as "An act for increased facilities of telegraphic communication between the Atlantic and Pacific States and the Territory of Idaho"; the improbability that Congress would grant to a company (the Western Union) having one line to

[1] The Western Union and the United States Company were both New York corporations.

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the Pacific the right to build and operate another line; and the fact "that it named another, an independent company," — are "evidence that competing lines were its purpose; and with that purpose obvious on the face of these statutes, it cannot be that by consolidation this purpose could be frustrated."

But it is not only the transfers of telegraph franchises under the fourth section of the Idaho Act that have all ground of legality cut from under them. The same thing is done by Justice Brewer for contracts of like aim resting for their validity on the nineteenth section of the act of July 1, 1862. That act and section offered the Pacific roads the alternatives of constructing and operating their own telegraphs, or substituting by arrangement the telegraphs of the overland companies. There may be some uncertainty as to the content of the latter alternative. But it makes no difference, as the railroads accepted the former and built their own telegraphs. Having done that, they cannot, the court holds, expect by a contract with the overland companies or their successor, the Western Union, to profit by the second alternative and divest themselves of the obligation to maintain and operate telegraphs.

The attempt of the defendants to bring the contract of 1881 within the permissive powers granted by section four of the Idaho Act and section nineteen of the act of 1862 thus being shown vain, there was nothing to hinder the full and complete application of the principle of the inalienability of a public franchise. Accepting this principle unreservedly, the court pronounced the contract of 1881 *ultra vires* and void.

Justice Brewer declared very emphatically that the contract of 1881 was meant to transfer and had transferred the telegraph franchise of the Union Pacific to the Western Union. For, though counsel maintained that the Union Pacific had not disabled itself from doing a general telegraph business, yet even the testimony of their own witnesses went to prove that it did little or no business but its own — that indeed it did not have the facilities to do anything more. Such a transfer of its franchise

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was beyond the authority conferred by the acts of 1862 and 1864; and yet, to prevent any doubt, the government, in the exercise of its reserved power to alter and amend, by the act of 1888 in terms has commanded the railway company to exercise all the duties of its telegraphic franchise, and forbidden the performance of those duties by any other company and through any other instrumentality than the direct servants and employees of the railway company. [This act of 1888 is] a valid exercise by Congress of its power to alter and amend. It does not purport to grant a new or take away an old franchise. It attempts simply to regulate the manner in which a franchise already granted and possessed shall be exercised; and surely the power to regulate the manner of exercise is within the reserved power to alter and amend.

It was urged in defense of the contract of 1881 that its effect was beneficial both for the railway company, for the government and for the public. The revenues of the company from the telegraph were increased; and the Western Union, with its extensive connections, unlimited facilities and exclusive devotion to telegraphy, was able to give the public better service than the Union Pacific, first and paramountly a railroad, could possibly furnish. Being undisturbed, as he says, "by the hue and cry about monopoly," Justice Brewer is fain to admit the force of this contention, but he denies its relevancy. It might be a better policy not to interfere with the contract between the Western Union and the Union Pacific, but a court has to do with rights, not with policies. Policies belong to the legislature. Given the validity of the Anderson Act, and the court has nothing to do but enforce it.

Proceedings under the Anderson Act have been entered upon against a number of railroads besides the Union Pacific. In several suits in the circuit court for the northern district of California, the government has been successful on the preliminary issues,[1] but the main issue is yet pending. Suits have also been begun against the Sioux City and Pacific, in Iowa, and against the Northern Pacific, in Minnesota.

[1] 49 Fed. Rep., 297, 304.

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V.

No study of the government's policy in reference to the bond-aided roads would be complete without a consideration of the attitude of the administrative officials whose duties bring them in contact with the corporations. The rulings of the second comptroller of the treasury are the most important in this connection. The opinions of the attorney-general, as having influenced the rulings of the comptroller, must also be noticed.

On the 31st of May, 1872, the second comptroller made a ruling, agreeably to section five of the act of July 2, 1864,[1] that one-half of the compensation for government dispatches sent by the Central Pacific telegraph (Ogden to San Francisco) should be withheld.[2] In the following December and February the same rule was applied to telegrams transmitted over Atlantic and Pacific[3] and Western Union wires along the line of the Union Pacific and the Central Pacific (Omaha to San Francisco). But in deference to the opinion[4] of the attorney-general this ruling was revoked as far as concerned the Western Union, with the construction of whose line, although it occupied their right of way, the railroad companies had had nothing to do. The acquisition of the railroad lines of telegraph by the Western Union was yet to come. The comptroller likewise followed the attorney-general in his opinion[5] that one-half of the compensation for government business done by the Kansas Pacific

[1] *Supra*, p. 186.

[2] For application to the bond and interest account of the Central Pacific.

[3] January 15, 1872, the comptroller had ruled that a claim of $120.68 for telegraphic services presented by the Atlantic & Pacific, as the purchasers of the Union Pacific telegraph by the contract of September 1, 1869, could not be paid to the Atlantic & Pacific, but must be paid to the Union Pacific; and then not the whole of the claim, but only a half, the other half being applied to the bond and interest account of the Union Pacific. Later legal opinions and judicial decisions but reproduced the thought of this ruling, which was that Congress in the Pacific Railroad Acts did not create separately a railroad and a telegraph company, but a company charged with both railroad and telegraphic functions, and that this company could not alienate its telegraph franchise.

[4] Rendered January 16, 1873.

[5] Rendered October 13, 1873.

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telegraph should be retained. The attorney-general postulated that the Kansas Pacific, in making the contract of October 1, 1866, by which it secured a telegraph line operated by the Western Union, had rejected the alternative offered by section nineteen of the act of 1862 and had itself assumed the performance of the obligations imposed by Congress in respect to a telegraph. The transmission of government telegrams on certain conditions as to compensation was one of these obligations, and it devolved upon any company to which the Kansas Pacific might assign the operation of the telegraph. The obligation, therefore, had devolved upon the Western Union, and the government should keep back from the Western Union one-half of the compensation for sending its telegrams over the Kansas Pacific.

The rulings just given were made before the telegraphs of the Union Pacific (main line) and the Central Pacific came into the hands of the Western Union by the contracts of 1877 and 1881. The most important ruling since the contracts is that made by Comptroller Isaac H. Maynard, December 2, 1885, and promulgated December 26, as General Army Order No. 124. Its most important provision is this :

> If the Western Union Telegraph Company (or other independent companies) builds and maintains a telegraph line which runs alongside of and occupies the same territory as the bonded Pacific Railroads, it is intended that army paymasters shall refuse payment to said independent companies for messages received or sent over such lines.[1]

The basis for this ruling is found in a letter of Comptroller Maynard to Secretary of the Treasury Manning, February 5, 1886, in which the writer held that in the contracts by which the Western Union acquired the telegraph lines of the Pacific roads, it assumed all the burdens and liabilities respecting a telegraph imposed upon these roads by acts of Congress, and that the rights of the United States were in no way affected or prejudiced. Consequently, the compensation for government

[1] Note that the *whole* of the compensation for messages was to be retained. This was after the passage of the Thurman Act. *Supra*, p. 186, note 4.

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telegrams should still be retained and applied to the bond and interest and the sinking fund accounts, just as if the roads themselves were administering their telegraphs. Indeed, if the government officials did not withhold such payments, they were violating a plain command of law. This reasoning, it will be remarked, is similar to that employed by the attorney-general in his opinion of October 13, 1873, favoring the retention of compensation for government dispatches over the Kansas Pacific. The comptroller, without calling in question the validity of the contracts between the Pacific roads and the Western Union, met this exigency of administration, it would seem, in the best practicable way, and adopted the most efficacious means to protect the rights of the government and secure the continuance of sinking-fund and bond and interest payments, so far as they are affected by the rendering of telegraphic service to the government.

This ruling of Comptroller Maynard has been followed[1] in settling the accounts, not only of army paymasters, but of all disbursing officers who come under the jurisdiction of the second comptroller's office. Later comptrollers, re-affirming the principle of Comptroller Maynard's ruling, have, in the spirit of Justice Brewer's recent decision, given expression to the view that the Western Union is the lessee and practical owner of the Pacific telegraphs for all purposes except the transaction of railroad business. Accordingly they have insisted on treating the Western Union as the real creditor for telegraphic services rendered the government, and have refused to receive accounts in the name of the railroads.[2] Adhering rigidly to the idea that the Western Union has stepped into the shoes of the Pacific railroads, they have compelled the Western Union to forego payment for government dispatches, crediting the amounts so withheld to the accounts of the railroads.

[1] *I.e.*, until very recently. See *infra*, p. 220.

[2] Contrast this with the refusal of the comptroller in 1872 to recognize the Atlantic & Pacific Telegraph Company, the lessee of the Union Pacific telegraph, as the creditor for telegrams sent over the leased line. *Supra*, p. 216. But the compensation withheld goes now, as it went at that time, to the credit of the railroad.

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But, instead of making the credits at regular commercial rates, which are the rates at which the railroads are required by the original Pacific Railroad Act to serve the government, the comptroller has made them merely at the rates annually fixed by the postmaster-general, which are much lower than the commercial rates. The Western Union, having accepted the conditions of the act of July 24, 1866, is amenable to these rates, but the Pacific railroads are not. The government thus appears to have taken an unfair advantage of the roads. As long as they are permitted to shift the transmission of government telegrams on to the Western Union, they ought to be credited at the rates which they could demand if they performed the service themselves.[1]

Prior to the ruling of Comptroller Maynard in 1885 large payments had been made to the Western Union which under this ruling would have been withheld. Comptroller Maynard estimated the total of such payments at $150,000. Claims to the extent of $12,495.62 against the Union Pacific and of $5,665.24 against the Central Pacific were definitely formulated. The Western Union refusing to refund these moneys, resort to the courts was determined upon. Accordingly, suit was brought against the Union Pacific in the circuit court for the southern district of New York,[2] and was decided February 16, 1891. Not attempting to pass upon the validity of the contract of 1881, the court held that it did not disable the Union Pacific from sending dispatches for the government. But, when sending the dispatches in question, the government officials had given no directions whatever for their transmission over railroad wires; had indeed handed them in written on Western Union blanks. The presumption, then, was that they were to be sent by Western Union wires. Moreover, when so sent, the government enjoyed the low rates fixed by the post-

[1] There is an opinion of the attorney-general rendered in 1879, during the lease of the Union Pacific telegraph to the Atlantic & Pacific, that would support the practice of the second comptroller's office. The opinion held that the rates for the Union Pacific, controlled by the Atlantic & Pacific, might be fixed according to the act of 1866.

[2] United States *vs.* Union Pacific Railway Co. *et al.*, 45 Fed. Rep., 221.

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master-general. It was, therefore, adjudged that the Western Union should keep the money paid for sending these telegrams. Evidently, the court in this case did not see in the arrangement existing between the Union Pacific and the Western Union that more or less complete alienation of the former's franchise which Justice Brewer and the comptrollers saw. The case, however, has been appealed to the Supreme Court.

A recent opinion of the attorney-general — May 5, 1893 — respecting the payment of a bill presented by the Western Union for messages sent over wires on routes of bond-aided Pacific roads, follows the decision just given, and recommends that payment for all such messages be withheld until the final determination by the higher courts of this case and of the case appealed from Judge Brewer — which recommendation the secretary of the treasury has directed the second comptroller to observe. This constitutes a reversal of the policy followed in the comptroller's office since Mr. Maynard's ruling, although as to actual change there is little.[1] Formerly, when compensation for telegrams was retained, it was credited to the account of the roads ; now all action is suspended until the decision of the courts shall have been rendered.

A ruling of February 7, 1893, promulgated by the first comptroller and followed by the second comptroller, prescribes the method of settling for government telegrams sent partly or wholly over bond-aided lines. The agent of the government sending the telegram may not pay for it, but the company must present its account to the proper department of the government, for the approval of the head of the department. The account is then to be transmitted to the accounting officers of the treasury for settlement. If the telegram was sent wholly over the line of a bond-aided road, the entire amount shall be retained and applied to the payment of the road's indebtedness to the government. Otherwise only so much shall be retained as the ratio of aided to unaided route requires. This order also instructs government agents, where practicable, to send telegrams by aided lines.

[1] Treasury Circular, No. 19.

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VI.

Under the contract of December 14, 1877, the Western Union pays annually to the railroad companies, parties to the contract, $100,000. The Central Pacific's share of this is $48,000, of which $30,120 are assigned to the bond-aided portion[1] of the road. This latter sum, therefore, goes annually to the debit side of the account, in ascertaining the net earnings which are subject to the percentage payment to the government.

The contract of the Union Pacific with the Western Union does not provide for an annual rental payment, but one-half of the cash receipts for commercial telegrams sent from Union Pacific offices goes to the Union Pacific. These receipts have been as follows :[2]

1879	$6,419.52
1880	34,908.87
1881	23,464.61
1882	26,011.82
1883	22,649.53
1884	22,095.89
1885	17,135.48
1886, incomplete report.	
1887	5,674.72
1888, incomplete report.	
1888–89 (June 30 to June 30)	24,459.99
1889–90	51,141.29
1890–91	61,589.39
1891–92	52,299.88

The receipts for 1879 are those of the Union Pacific Railroad; for 1880 and subsequent years the figures relate to the Union Pacific Railway; the consolidation of the Union Pacific Railroad, the Kansas Pacific Railway and the Denver Pacific

[1] That portion comprises 860.66 out of a total of 1,360.28 miles.

[2] These figures were taken from the reports of the Union Pacific to the commissioner of railroads, whose office was not created until 1878.

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Railway having taken place January 24, 1880. Of the 1,821.86 miles in the system, 1,428.43 are bond-aided. The receipts from telegrams sent over the bond-aided portion of the railway are subject to the government requirement in respect to a percentage payment of net earnings. When telegrams are sent partly over the aided and partly over the non-aided portion, each portion is assigned its *pro rata* share of the receipts.

The amounts in the table of earnings credited to their telegraphs by the Union Pacific and the Central Pacific are small compared with some other items of revenue. But these direct money earnings do not exhaust the benefits the roads receive from their contracts with the Western Union. What these different benefits are may be seen by reference to the contracts.[1] Important among them is the free service over the Western Union wires throughout the country, which is enjoyed by the Union Pacific up to a certain amount and by the Central Pacific without limit. Aside from the gratuitous element in this service, the value in the administration of a railroad of membership in the Western Union system, with its immense facilities and its lines extending to every part of the land, must be very great and the earning power of the road must be greatly enhanced thereby. So that the relinquishment of earnings in one direction may be largely compensated by the increase of earning power in another. Indeed, it may well be doubted whether, with the Western Union competing with them and putting in offices where it had none before, the Pacific roads would derive from their telegraphs any profit whatever.

These considerations render it probable that the government, as a creditor of the bond-aided Pacific roads, loses nothing by the transference of their telegraph franchises. For, since the companies still retain their property rights in the telegraphs, the government's lien upon them is not impaired. And if, as we have seen seems likely, the contracts with the Western Union enhance the earning power and with it the value of the

[1] There are of course reciprocal obligations.

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railroad plants, the annual payments to the government on account of railroad earnings are increased and the government's lien upon the railroads made of greater worth.

This investigation has revealed an apparently irresistible tendency towards the absorption of the Pacific telegraphs by the Western Union; for, if not built in conjunction with the Western Union, they were soon transferred directly or indirectly to this great corporation. Adverse judicial decisions, even when based on the great legal principle of the inalienability of a public franchise, have not stopped this process of absorption. That the higher courts, in the great case[1] now awaiting their consideration, will confirm the decision of the lower court, seems likely.[2] But that existing arrangements will even then really be terminated, would be a rash prediction in the face of the powerful economic forces at work tending to consolidation and monopoly. For, whatever may have been the immediate occasion of the existing arrangements, they are no doubt attributable ultimately to the influence of these forces.

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[1] United States *vs.* Western Union and Union Pacific is referred to.

[2] [The decision of the Circuit Court of Appeals on the appeal from the judgment of Justice Brewer was rendered January 29, 1894 (U. P. Ry. Co. *vs.* U. S., 59 Fed. Rep., 813). The decision reversed the judgment of the lower court, holding (1) that the contract of 1881 was not beyond the power of the railway company, either as divesting it of its telegraphic franchise, or as disabling it to discharge its public duties; (2) that the privileges conferred by the contract on the Western Union exclusively were not such as the railway company was bound at that time to confer equally on all other telegraph companies, though since the Anderson Act this is probably not the case; (3) that the contract of October 1, 1866, was valid; and (4) that the duty of the Pacific Railroad Companies to afford equal telegraph facilities to all connecting lines must be enforced, not by a bill in equity, but by application to the Interstate Commerce Commission. —EDS.]

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GIFFEN'S CASE AGAINST BIMETALLISM.

I.

IN the number of the POLITICAL SCIENCE QUARTERLY for September, 1893, there was published a review of Giffen's *The Case against Bimetallism*, signed by Charles B. Spahr. Mr. Spahr gives Mr. Giffen the credit for sincere and careful study of the question, and acknowledges his general fairness. But, according to Mr. Spahr, there is no real basis of fact to support Mr. Giffen's principal contention, which is, that the alleged bimetallism of France has never been a real bimetallism. Mr. Giffen asserts that there has been in France, during the so-called bimetallic period, no absolute interchangeable equality between gold and silver, at the legal ratio of $15\frac{1}{2}$ to 1; and that there have been variations in this ratio, by which the commercial world has been governed. Mr. Giffen gives tables of figures showing these variations. The tables prove Mr. Giffen's statement, and form a solid basis for his argument. The task before Mr. Spahr is to overthrow this argument. I wish to direct attention to the method by which he attempts to do this.

He quotes Mr. Giffen's argument as follows:

> In 1886, in a paper read at the Bankers' Institute, I published the figures of the actual premium on gold in Paris at the first of each month for the years 1820 to 1847,—the greater portion of the period —which placed the fact beyond doubt that gold and silver did not pass in all that time at the ratio, but that gold varied in price usually between one-half per cent and two per cent premium, with not very frequent and not very lengthened lapses below the one-half per cent, and not one date being mentioned on which there was not a premium of some sort. These premiums were quite sufficient to make the practice different from the law. At anything over even one-quarter per cent premium for gold (or even one-hundredth of one per cent) no man alive would pay a debt in gold which he could pay in silver

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without a premium, and consequently the demand for gold for standard and for unlimited legal tender in France was all this time in suspense. *When the premium was between one and two per cent it was very serious indeed. Clearly not even for the smallest payment would any man pay in the proportion of £102 for every £100 of debt.*

When I wrote the paper for the Bankers' Institute in 1886, I had no figures for the period from 1803 to 1820 before me; but I may now refer to the ratios of Soetbeer, *as quoted in the last report of the director of the United States mint (page 162) which gives the following average ratios of silver to gold from 1803 to 1820 inclusive.*

The sentences in italics are left out by Mr. Spahr; the remainder of the quotation is correct.

Then Mr. Spahr proceeds thus:

Here follow portions of Soetbeer's tables, giving the ratio between the average prices of gold and silver bullion in the London market between 1803 and 1873. The French ratio is 1 to 15½ and the extreme variations during each decade are as follows. [Here is given a table stating a ratio for one year in each decade.]

These tables are likewise published by bimetallists to prove that the free coinage of both gold and silver in France did keep the coins of the two metals at par with each other, and thus established a bimetallic standard. The facts then are agreed upon. What about the conclusions? A moment's consideration will show how far afield Mr. Giffen has gone in maintaining that France was mistaken in believing that she had had the concurrent circulation of the two metals under her bimetallic law. The points he fails to consider are these: (1) Soetbeer's prices are London prices; (2) both Soetbeer's prices and his own are the prices of silver bullion and not of coined silver, and coinage in France, though free, was not gratuitous.

The first natural inference from this statement of Mr. Spahr's is that the table he gives is taken from Mr. Giffen's book. But this is not the fact. The table given by Mr. Giffen, in connection with the extract quoted, covers each year from 1803 to 1820. Mr. Giffen gives this table, as he states, on the authority of the director of the United States mint, and for the purpose of adding to his former argument the statistics of the period 1803 to 1820. Mr. Spahr substi-

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tutes for this table another, compiled, apparently, by himself, from the London quotations, and he argues from this substituted table as if it were Mr. Giffen's!

But if Mr. Spahr had quoted the actual table printed by Mr. Giffen in connection with the passage quoted, he would still be guilty of ignoring the principal basis of Mr. Giffen's argument. This basis is to be found in the paper read by Mr. Giffen at the Bankers' Institute in 1886. That paper is included in the volume Mr. Spahr was reviewing, is referred to in the quotation he makes, and a foot-note to that quotation gives the page where it is to be found. In this paper, on page 59, is a summary of the table giving the premium on gold in Paris at the beginning of each month for the years 1820 to 1847. The full table is referred to on page 58, and is given in Appendix A. It occupies ten pages, 225 to 234 inclusive. It is entitled: "Statement of the rate of exchange on Paris on the first post day in every month since January, 1820, and of the premium on gold at Paris at the same time."

Mr. Giffen thus plainly declares that the figures given by him are for the premium on gold *in Paris*. When, therefore, Mr. Spahr intimates that Mr. Giffen is working on Soetbeer's prices, which are London prices, he flatly contradicts Mr. Giffen. He contradicts him, and ignores his principal array of facts at the same time.

If Mr. Spahr read this Bankers' Institute paper and examined the Appendix A to which it refers, it is difficult to understand how he could suppose that Mr. Giffen was using London prices and not Paris prices. In Mr. Giffen's voluminous table the premium on gold is always set down at so many francs per thousand francs. How is it possible to confuse such a quotation of the premium on gold *in Paris* with the London price of bar silver? "Francs" would never be used in quoting London prices.

The gist of Mr. Giffen's contention is that there has never been in France for any long period an absolute interchange of gold and silver at the legal ratio of $15\frac{1}{2}$ to 1. Mr. Giffen proves this by citing the actual premiums paid in Paris for

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gold during the years 1820 to 1847 inclusive. There was always a premium.

Mr. Spahr replies to this argument by giving a table of the relative value of gold and silver compiled from Soetbeer's London prices of silver, as if it were Mr. Giffen's table. Then he says the points Mr. Giffen fails to consider are these : "(1) Soetbeer's prices are London prices ; (2) both Soetbeer's prices and his own [Giffen's] are the prices of silver bullion and not of coined silver, and coinage in France, though free, was not gratuitous."

The simple statement that Soetbeer's prices are London prices is practically true, though he does give a small table of gold and silver prices *in Paris* for the years 1876 to 1886 inclusive, compiled by Clément Juglar. His principal table is made up from the London quotations of Pixley and Abell ; but the intimation that Mr. Giffen's argument is based on the London price of silver is without foundation.

Mr. Spahr's (2) is equally baseless. Mr. Giffen's argument is not founded on the price of bar silver either in Paris or in London. To say, as Mr. Spahr does, that Mr. Giffen's "prices are the prices of silver bullion, and not of coined silver," is to contradict the express statement made by Mr. Giffen, that the table he prints is a record of the *premium* which was paid at the given dates for the purchase of gold. Nor can there be any juggling between gold ingots and gold coin ; there was a premium on both. The premium was paid in silver or equivalent bank notes. The existence of this premium proves that the two metals were not absolutely interchangeable at the legal ratio. It follows that Mr. Spahr has himself traveled "far afield," and has not overthrown Mr. Giffen's argument.

As a further aid to the study of the subject, and as a confirmation of Mr. Giffen's conclusions, the following table is valuable. It is taken from *Notes et Tableaux pour servir à l'Étude de la Question Monétaire*, by H. Costes, deputy-director of the *Direction Générale des Caisses d'Amortissements et des Dépôts et Consignations*, and formerly deputy-director of the *Direction Générale des Monnaies et Médailles*. The author is an undoubted authority. The table can be found at page 206 of his work.

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VARIATIONS IN THE PRICE OF GOLD AND SILVER IN PARIS, AND THE RELATION OF VALUE BETWEEN THE TWO METALS.

1841–1872.

YEARS.	GOLD. Price of the Kilogramme at the tariff of $^{1000}/_{1000} = 3{,}437$ francs.			SILVER. Price of the Kilogramme at the tariff of $^{1000}/_{1000} = 220.56$ francs.			Relation of Gold to Silver.
	Premium per Kilogr.	Discount per Kilogr.	Value of the Kilogramme.	Premium per Kilogr.	Discount per Kilogr.	Value of the Kilogramme.	
1st Period.	Francs.	Francs.	Francs.	Francs.	Francs.	Francs.	Francs.
1841	18.04	—	3,455.04	—	0.25	220.31	15.68
1842	43.80	—	3,480.80	—	0.47	220.09	15.81
1843	45.52	—	3,482.52	—	0.25	220.31	15.81
1844	40.37	—	3,477.37	—	0.14	220.42	15.78
1845	40.37	—	3,477.37	—	0.14	220.42	15.78
1846	48.95	—	3,485.95	0.62	—	221.18	15.76
1847	45.52	—	3,482.52	0.19	—	220.75	15.78
1848	38.65	—	3,475.65	0.30	—	220.86	15.73
1849	43.80	—	3,480.80	—	—	220.56	15.78
1850	—	0.85	3,436.15	0.51	—	221.07	15.54
	Averages . .		3,473.41	. . .	. . .	220.60	15.74
2d Period.							
1851	—	2.56	3,434.44	0.73	—	221.29	15.52
1852	7.70	—	3,444.70	1.83	—	222.39	15.49
1853	—	4.27	3,432.73	1.61	—	222.17	15.45
1854	—	10.31	3,426.69	2.86	—	223.42	15.34
1855	—	3.05	3,433.95	1.29	—	221.85	15.48
1856	18.04	—	3,455.04	2.94	—	223.50	15.46
1857	19.66	—	3,456.66	5.00	—	225.56	15.32
1858	—	2.56	3,434.44	1.36	—	221.92	15.48
1859	—	2.56	3,434.44	3.49	—	224.05	15.33
1860	—	2.42	3,434.58	2.90	—	223.46	15.37
1861	6.50	—	3,443.50	2.10	—	222.66	15.46
1862	1.18	—	3,438.18	2.68	—	223.24	15.40
1863	3.07	—	3,440.07	3.31	—	223.87	15.37
1864	9.60	—	3,446.60	3.57	—	224.13	15.38
1865	5.67	—	3,442.67	1.02	—	221.58	15.54
	Averages . .		3,440.04	. . .	. . .	222.99	15.42
3d Period.							
1866	—	0.73	3,436.27	3.41	—	223.97	15.34
1867	1.87	—	3,438.87	1.20	—	221.76	15.51
1868	—	1.42	3,435.58	0.33	—	220.89	15.55
1869	—	0.08	3,436.82	0.46	—	221.02	15.55
1870	0.99	—	3,437.99	0.47	—	221.03	15.55
1871	35.80	—	3,472.80	4.28	—	224.84	15.44
1872	32.70	—	3,469.70	2.47	—	223.03	15.56
	Averages . .		3,446.86	. . .	. . .	222.36	15.50
	Averages for all time, 1841 to 1872 . . .		3,451.90	. . .	. . .	222.11	15.54

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From this table it appears that in the first period, from 1841 to 1850, gold was at a premium. In the second period, 1851 to 1865, silver was at a premium. In the third period, 1866 to 1872, silver lost its advantage and at the close of the period gold again was at a premium, or silver was at a discount.

From this time on, we know that the discount on silver increased, until in 1874 its free coinage was restricted, and in 1878 free coinage was stopped in France. Silver has continued to decline. In December, 1893, the recorded discount was from 462 to 469 francs per 1000. This is equal to a ratio between the two metals of 1 gold to 22.66 or 22.76 silver.

The facts set forth in Mr. Costes' table must forever settle the question of the status of the two metals in France. They show that absolute interchangeability has not existed. There have been premiums, first on one metal, and then on the other, so that there has been a "limping standard."

The question which is before the American people to-day is whether such a "limping standard" is the best standard. The question is not whether silver should be used as money in conjunction with gold. Under any system a large quantity of silver can be used to advantage. The question is as to the ultimate standard. The wisest and most catholic examination of all the conditions is necessary to decide this question rightly.

PEACE DALE, R.I. ROWLAND HAZARD.

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II.

I sincerely regret that my treatment of Mr. Giffen should have seemed to Mr. Hazard unfair. In citing Mr. Giffen's arguments I took some pains not to paraphrase, and when quoting, I tried to make my quotations long enough to give the full force of his argument. When I had quoted Mr. Giffen's declaration that the premium upon gold was "usually between one-half per cent and two per cent," and that "at anything over even one-quarter per cent premium (or even one-hundredth of one per cent) no man alive would pay a debt in gold that he could pay in silver without a premium," I thought that I had stated his point fully and fairly.

Mr. Hazard's next charge looks more serious but is really less so. Following the passage quoted, Mr. Giffen gave, in the course of a page and a half, the Soetbeer ratios for each year from 1803 to 1820, and for each year from 1848 to 1867. These ratios are absolutely undisputed data, and there seemed no possibility of the suspicion of unfairness, when, in a dozen lines, I gave the extreme variations for each decade in which the bimetallic law was in force. There was no possible object to be gained in thus condensing Soetbeer's tables, except compactness and completeness.

Mr. Hazard's third point is well taken. Though I never dreamed that Mr. Giffen's prices were London prices, I did believe that his prices, like Soetbeer's, were those of gold bullion and not French coin. Subsequent reference to files of the *Journal des Débats* showed me that the exchange dealer's prices for French coin, as well as for bar gold and English sovereigns, were subjects of quotation. Mr. Giffen did not cite his authority other than "old blue books," and it was impossible to attempt verification. Mr. Hazard's only serious inaccuracy at this point is that which Molesworth has pointed out in Mr. Giffen's tables, *viz.*, the assumption that "the premium was paid in silver or equivalent bank notes." The premium was never paid in silver, but always in bank notes, in which

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silver as well as gold was generally at a premium, as may be seen from Costes' table in Mr. Hazard's article.

That which is most essential, however, to the understanding of this question is entirely overlooked by Mr. Hazard. Bimetallists do not assert that under bimetallism the bullion dealers' price of the two metals will remain absolutely uniform. Under monometallism the bullion dealers' price of the one metal does not remain absolutely uniform. What bimetallists do assert is that *through* the small premium offered by the bullion dealers, now for the one metal and now for the other, this parity in ordinary transactions is maintained. By means of this premium any increased demand for either metal is supplied out of the circulation, by melting or exporting, while an increased demand for the other (for currency) is thereby created. It was in this way that France, in Chevalier's famous phrase, served as a "parachute" to prevent the fall of gold when its production a generation ago was suddenly increased nearly tenfold. The premium upon silver at the bullion dealer's, Chevalier pointed out, was often about two per cent. Yet in ordinary payments silver would not be taken at any higher rate than gold. In our own country we had a similar experience last fall. At the very time that the monometallists were crying out that the fall of prices (despite all laws of political economy) was due to the fear of a depreciated silver currency, silver certificates at the exchange dealer's commanded a premium of one per cent over gold, and of three per cent (even four per cent) over certified checks. Yet in ordinary transactions all were received alike, and many customers of up-town banks continued to deposit their silver and paper money without the thought of a premium. With this experience so vividly in their minds, Americans do not need an historical argument to show them that the slight bullion-dealer's premium at Paris, now on gold and now on silver, was indicative of the concurrent circulation of the two metals, instead of inconsistent therewith. That large amounts of silver remained in circulation long after the deluge of gold, I believe not even Mr. Giffen denies. Certainly Chevalier admitted it in

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1859, and the statement of M. de Parieu, Vice-President of the Council of State, while presiding at the Monetary Conference,[1] is conclusive as to its persistence until the end of the period in which the ratio was less than $15\frac{1}{2}:1$. That gold circulated in considerable amounts during the earlier period, is indicated by the extreme smallness of the exchange dealers' premiums, and is confirmed, as I urged in my former paper, by the bringing of large amounts of gold each year to the mint to be coined, although there was a mint charge for coinage.

An unprejudiced examination of the workings of the bimetallic law in France cannot but convince one, I think, that the monometallists of the English Gold and Silver Commission showed more wisdom, if less valor, than Mr. Giffen and Mr. Hazard, when they admitted that this law did hold the two metals practically at par during seventy years of unparalleled changes in their relative supply cost of production.

C. B. SPAHR.

NEW YORK CITY.

[1] Senate Documents, 1867–68, p. 44.

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TAXATION OF RAILWAY GROSS RECEIPTS.

THE comptroller of the State of New York, commenting in his last report upon the corporation tax, and particularly upon the tax on the gross receipts of transportation companies, says:

> Nearly all the companies liable to this tax have strenuously insisted that the state was limited, in making the computation for the purpose of levying such tax, to earnings upon business originating and terminating wholly within the boundaries of the state, [that all other business] was interstate business, and came within the prohibition contained in the constitution, that the state could not levy a tax based or computed upon such earnings.
>
> A number of decisions of the courts were cited as tending to sustain this contention, and this department seems to have acquiesced in this claim, and for a number of years there appears to have been no effort made to impose a tax upon the franchise or business of this class of corporations computed upon earnings of this character.
>
> This construction, however, appears to have been changed or materially modified by a decision of the United States Supreme Court in the case of the State of Maine against the Grand Trunk Railway Company of Canada, decided in December, 1891, and involving the construction of a statute somewhat similar to the one in force in this state. In that case it was held, in substance, that a tax upon the franchise or business of such a corporation may be lawfully imposed, based and computed upon the entire amount of gross earnings within the state imposing the tax, and that the levying of such a tax is not prohibited by the Constitution of the United States.

The comptroller adds that, soon after the decision was announced, he asked the advice of the attorney-general of the State of New York, who furnished an opinion as to the construction that should be placed upon the New York statute creating the tax. In this opinion the attorney-general said:

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Where the tax is imposed upon the corporation for the privilege of enjoying and exercising corporate franchises and powers within the state, it will be upheld, although the corporation may be engaged in the business of interstate and foreign transportation, and although resort is had to the earnings of the corporation from such business for the purpose of determining the amount of tax to be paid.

He held, further, that the state is justified in levying a tax upon the whole amount of the gross earnings for business transacted within the state, whether such business is of local or of an interstate character.

Inasmuch as the policy of New York is to be changed in regard to this matter, and inasmuch as such contemplated change of policy has attracted considerable attention of late, it will perhaps be well to examine carefully the decisions of the supreme court upon this question and also to see how far, if at all, the decision in Maine *vs.* the Grand Trunk Railway has modified the rule that had formerly prevailed.

The first case that came up before the supreme court relative to this matter was that of the Philadelphia and Reading Railroad Company *vs.* Pennsylvania.[1] The legislature of Pennsylvania, by an act passed February 23d, 1866, imposed on certain railroad, canal and tranportation companies incorporated under the laws of the state, a tax of three-fourths of one per cent of the gross receipts of such companies, the tax to be paid semi-annually. This act having been upheld by the supreme court of Pennsylvania, appeal was taken to the supreme court of the United States, and the question presented before that body was, whether the act was in conflict with that clause of the constitution of the United States which conferred upon Congress power to "regulate commerce with foreign nations and among the several states." The court upheld the tax, and in deciding the question before it, intimated that the tax was a tax on the franchise of the corporation. Mr. Justice Strong said, in delivering the opinion of the Court:

[1] 15 Wallace, 284.

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It is not to be questioned that the states may tax the franchises of companies created by them, and that the tax may be proportioned either to the value of a franchise granted or to the extent of its exercise.

The court went still further and held that the value of the franchise might properly be measured by the gross receipts of the corporation, even if such gross receipts were derived in part from interstate commerce.

The tax is laid upon the gross receipts of the company; laid upon a fund which has become the property of the company, mingled with its other property and possibly expended in improvements or put out at interest. The statute does not look beyond the corporation to those who have contributed to its treasury. The tax is not levied and, indeed, such a tax cannot be, until the expiration of each half year, and until the money received for freights and from other sources of income has actually come into the company's hands. Then it has lost its distinctive character as freight earned, by having become incorporated into the general mass of the company's property. While it must be conceded that a tax upon interstate transportation is invalid, there seems to be no stronger reason for denying the power of the state to tax the fruits of such transportation after they have become intermingled with the general property of the carrier, than there is for denying her power to tax goods which have been imported, after their original packages have been broken and after they have been mixed with the mass of personal property in the country.

A careful consideration of the decision and of the facts upon which it was based, will reveal two things. In the first place, the corporation which was taxed was a domestic corporation, incorporated by the taxing state. In the second place, the supreme court does not distinctly state what it is that is taxed. In one part of the opinion the franchise of the corporation would seem to be the thing taxed; in another it appears to be held that the tax was levied on the property, and that the gross receipts, even if partially derived from interstate commerce, had, after the expiration of six months, become so intermingled with the general property of the company as to form an indistinguishable part of it.

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This unclearness as to the object that is taxed is not altogether removed by the later decisions of the court, although the idea that the tax is laid upon the franchise seems to be preferred. In Fargo *vs.* Michigan,[1] Mr. Justice Miller, who rendered the decision, does speak of the fact that the tax may be a tax on property, but he lays much greater stress upon the idea that the tax is upon the franchise. He says, in commenting upon the decision just referred to, that

> the grounds upon which it was distinguished from the one in the preceding case upon freight [that in which the tonnage tax was declared to be unconstitutional] were that, the corporation being a creation of the legislature of Pennsylvania, and holding and enjoying all its franchises under the authority of that state, this was a tax upon the franchises which it derived from the state and was for that reason within the power of the state; and that, in determining the mode in which the state could tax the franchises which it had conferred, it was not limited to a fixed sum upon the value of them, but it could be graduated by and proportioned to either the value of the privileges granted, or the extent or results of their exercise.

This conclusion, that a tax measured in amount by the gross receipts of domestic railways is a tax upon the franchise, is logically much more satisfactory than the conclusion that such a tax is a tax upon the property of the company; for if it be regarded as a tax upon the property of the company, why should it consist in a percentage of the gross receipts? Why should the gross receipts be singled out from the totality of the company's property as the means by which to measure the amount of the tax? It is perfectly proper to hold that that portion of the gross receipts which is derived from interstate commerce, has, after the expiration of six months, become so merged in the totality of the company's property as to be completely indistinguishable, and that therefore a tax measured in amount by the gross receipts is not a tax upon interstate commerce, even where a portion of such gross receipts is derived from interstate commerce; but it certainly is not

[1] 121 U. S., 230.

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logical to hold that the thing which is taxed is property, when the law which imposes the tax singles out the gross receipts as the means by which to measure the tax. As well might one maintain that a tax measured in amount by income is not an income but a property tax.

The question as to what is the thing which is taxed under laws taxing gross receipts of railways, is not of merely academic importance. It has great significance from the point of view of practical law; for upon its decision will depend the constitutionality of taxes on the gross receipts of foreign railway corporations. As Mr. Justice Miller intimates in the case of Fargo *vs.* Michigan, already referred to, if the corporation whose gross receipts are taxed is a domestic corporation, there can be no objection to the tax, inasmuch as it falls upon the franchise. On the other hand, if a foreign corporation is concerned, it is difficult to see how the franchise may be taxed, inasmuch as such franchise is not within the jurisdiction of the taxing state. This seems to have been the view of the Supreme Court of the United States in the case of Ratterman *vs.* the Western Union Telegraph Company.[1] This case arose from the attempt of Ohio to tax the Western Union Telegraph Company, a New York corporation, upon the gross receipts derived from its business, making no distinction between the receipts from interstate and those from domestic commerce. The question submitted to the supreme court was, whether

> a single tax assessed under the revised statutes of Ohio, section 2778, upon the receipts of a telegraph company, which receipts were derived partly from interstate commerce and partly from commerce within the state, but which were returned and assessed in gross and without separation or apportionment, is wholly invalid, or invalid only in the proportion and to the extent that said receipts were derived from interstate commerce.

The court decided that such a tax was not wholly invalid, but was invalid only so far as such receipts were derived from interstate commerce.

[1] 127 U. S., 411. See also W. U. Tel. Co. *vs.* Seay, 132 U. S., 472.

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It will be noticed that in these cases the supreme court has advanced another theory, namely, that, in the case of foreign corporations which have no franchises that may be taxed, the thing that is taxed is the business; that, therefore, only that portion of the business which is not interstate may be taxed. This position has been emphasized and enforced in the very recent case of the Horn Silver Mining Company *vs.* New York.[1] Here a foreign corporation was, it was held, engaged in business in the State of New York, and the question arose whether that state could impose a tax upon it. Mr. Justice Field, in delivering the opinion of the court, said:

> As to a foreign corporation — and all corporations in states other than the state of its creation are deemed to be foreign corporations — it can claim a right to do business in another state to any extent, only subject to the conditions imposed by its laws. . . . Having the absolute power of excluding the foreign corporation, the state may, of course, impose such conditions upon permitting the corporation to do business within its limits as it may judge expedient, and it may make the grant or privilege dependent upon the payment of a specific license tax or a sum proportioned to its capital. No individual member of the corporation or the corporation itself can call in question the validity of any exaction which the state may require for the grant of its privileges. It does not lie in any foreign corporation to complain that it is subjected to the same law with the domestic corporations. The counsel for the appellant objects that the statute of New York is to be treated as a tax law, and not as a license to the corporation for permission to do business in the state. Conceding such to be the case, we do not perceive how it in any respect affects the validity of the tax; however it may be regarded, it is the condition upon which a foreign corporation can do business in the state, and in doing such business it puts itself under the law of the state, however that may be characterized.

Justice Field admits, however, that this doctrine is subject to qualifications, one of which he declares to be "that the state cannot exclude from its limits a corporation engaged in interstate or foreign commerce."[2] This qualification comes out most

[1] 143 U. S., 305.

[2] He cites Pensacola Tel. Co. *vs.* Western Union Tel. Co.; 96 U. S., 1 and 12.

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clearly in the case of the Gloucester Ferry Company *vs.* Pennsylvania.[1] In this case Mr. Justice Field, in rendering the opinion of the court, says that freedom of transportation

> implies exemption from charges other than such as are imposed by way of compensation for the use of the property employed or for facilities afforded for its use, or as ordinary taxes upon the value of the property. . . . However great her [the state's] power, no legislation on her part can impose a tax on that portion of interstate commerce which is involved in the transportation of persons and freight, whatever be the instrumentality by which it is carried on.

The facts of this case were as follows: The Gloucester Ferry Company did business between New Jersey and Pennsylvania. In Pennsylvania it leased a dock where it landed its passengers and freight. Pennsylvania, by a law of 1879, provided for the taxation of all companies or associations, whether incorporated under the law of Pennsylvania or under that of any foreign state or government, which were doing business within the commonwealth, or which had capital employed in the commonwealth in the name of any other company or person. Such tax was to be measured in amount by the dividends of the corporation, if they amounted to six per cent upon the par value of the capital stock; if no dividend were earned or declared, or if the dividend earned or declared did not amount to six per cent upon the capital stock, then the tax was to be levied upon the value of the capital stock. Inasmuch as the ferry company had no property in Pennsylvania, the only ground for the levy of the tax was, that the company was doing business within the commonwealth; and the supreme court held that, inasmuch as this business consisted entirely of interstate commerce, Pennsylvania could not constitutionally impose this tax upon the company.

A similar decision was made by the same court in the case of the Philadelphia and Southern Mail Steamship Company *vs.* Pennsylvania.[2] Pennsylvania attempted to levy a tax upon every transportation company incorporated by, or doing busi-

[1] 114 U. S., 196. [2] 122 U. S., 326.

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ness within, the commonwealth, which tax was to be at the rate of eight-tenths of one per cent upon the gross receipts of said company for tolls and transportation. The steamship company was incorporated under the laws of Pennsylvania, but was engaged entirely in the business of interstate and foreign commerce; and the court held that, since the receipts which were to be taxed were to be the receipts from tolls and transportation, and since the company was engaged entirely in the business of interstate commerce, the tax was unconstitutional and void. The court refused to apply the doctrine laid down in the Railway Gross Receipts Case, that the gross receipts lost their characteristic as receipts derived from interstate commerce, and therefore that a tax to be measured by them might be levied on the franchise of the company, where the franchise of such company had been granted by the state. It held that, inasmuch as the gross receipts referred to in the law were to be the gross receipts from tolls and transportation, such receipts could not lose their characteristic as receipts from interstate commerce.

The rules to be derived from the decisions of the United States supreme court thus far considered may be stated as follows:

1. A state may tax the property of railway corporations, whether foreign or domestic, although such property may be used for the purposes of interstate commerce; provided, of course, that such property is within its jurisdiction.[1]

2. A state may impose a tax upon domestic railway corporations, to be measured by the gross receipts of such corporations, whether such gross receipts are derived from interstate commerce or not; such tax being, in accordance with the later decisions and with the more logical rule, a tax upon the franchise of such a corporation. The franchise of a domestic corporation, being within the jurisdiction of the taxing state, is subject to taxation.[2]

[1] P. & R. Railway Co. *vs.* Pennsylvania, 15 Wallace, 384. See also Pullman Palace Car Co. *vs.* Pennsylvania, 141 U. S., 18.

[2] P. & R. Railway Co. *vs.* Pennsylvania, 15 Wallace, 384.

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3. No state may levy a tax upon a foreign corporation which shall be measured by the gross receipts of such corporation, where the gross receipts are derived partly or wholly from interstate commerce. In case the receipts are derived partly from interstate commerce and partly from commerce within the state, a tax upon the former is void, though, as to the latter, it would seem to be perfectly valid. Here the thing which would seem to be taxed is the business of the corporation, and not its franchise; inasmuch as a corporation may not be taxed on its franchise by a state other than that which gives the franchise. The business which is taxed in such a case may, in accordance with the provisions of the national constitution, be only such business as is carried on within the state.[1]

4. No state may levy a tax on the business of transportation companies, even domestic companies, to be measured by the gross receipts for tolls and transportations, where such corporations are engaged exclusively in interstate transportation.[2]

By adopting this statement of the doctrines of the supreme court, it is possible to reconcile all of the decisions which have been referred to, and which are the most important decisions upon this subject. It must be admitted, however, that there is one case which has not as yet been referred to, and which it is impossible to reconcile with this statement of the doctrine of the court. This case is that of the Erie Railroad Company *vs.* Pennsylvania,[3] decided very soon after the decision of the Philadelphia and Reading case. Mr. Justice Hunt, who delivered the opinion of the court, stated the question at issue to be "that of the right and intention of the State of Pennsylvania to impose a tax upon the gross receipts of the Erie Railway Company." In fact, however, the only point which was really considered by the court was that of the state's intention. Later on in the opinion Judge Hunt says:

[1] Fargo *vs.* Michigan, 121 U. S., 230; Ratterman *vs.* the Western Union Telegraph Co., 127 U. S., 411; Western Union Telegraph Co. *vs.* Seay, 132 U. S., 472.

[2] P. & S. Mail Steamship Co. *vs.* Pennsylvania, 122 U. S., 326; Gloucester Ferry Co. *vs.* Pennsylvania, 114 U. S., 196.

[3] 21 Wallace, 492.

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> Not struggling against the effect of this decision [that is, Philadelphia and Reading *vs.* Pennsylvania], the Erie Railroad Company still contends that the tax in question is not legal for two reasons. First, that this company was not intended by the legislature to be embraced within the terms of the act of 1868, and second, that the terms and conditions of former acts of the legislature have created an agreement with the company that it shall be exempt from taxation, except to a limited extent and in a specified manner.

The railroad company was, however, not a Pennsylvania corporation. It was organized under the laws of New York, and by certain acts of the legislature of Pennsylvania it had been permitted to build its line through a corner of Pennsylvania, in order to avoid certain engineering difficulties. What was actually decided by the supreme court in this case was, therefore, that the state had a perfect right to impose a tax upon the gross receipts of a foreign railway company, whether such gross receipts were derived from interstate commerce or not. But the question of this right was not really considered by the court in rendering the decision; and as the decision was rendered before that in Ratterman *vs.* Western Union Telegraph Company, to which reference has already been made, it must be regarded as having been practically overruled by the latter.

Such was the condition of the law, as derived from the decisions of the United States Supreme Court, at the beginning of the year 1891. In October, 1891, however, the court was called upon to decide this question again in the case of Maine *vs.* the Grand Trunk Railway Company,[1] to which reference is made by the comptroller of the State of New York in his report. The comptroller asserts that this decision "changes or materially modifies" the line of decisions which have been referred to, in so far as the power of the state to tax the gross receipts of railway companies engaged in interstate commerce is concerned. Before adopting this view, however, it will be well to consider carefully the facts involved

[1] 142 U. S., 271.

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in the late decision. The facts, as stated by Mr. Justice Field, are as follows:

The defendant is a corporation created under the laws of Canada and has its principal place of business at Montreal in that province. Its railroad in Maine was constructed by the Atlantic and St. Lawrence Railroad Company, under a charter from that state, which authorized it to construct and operate a railroad from the City of Portland to the boundary line of the state, and, with the permission of New Hampshire and Vermont, it constructed a railroad from that city to Island Pond in Vermont, a distance of 149½ miles, of which 82½ miles are within the State of Maine. In March, 1853, that company leased its rights and privileges to the defendant, the Grand Trunk Railway, which had obtained legislative permission to take the same, and since then it has operated that road and used its franchises.

In 1881, the State of Maine passed a statute imposing a tax upon every corporation, person or association operating a railroad in the state, the tax to be measured by the gross receipts, which, in their turn, were to be determined by the ratio of the mileage within the state to the entire mileage of the company. The Grand Trunk Railway Company

made no returns as a corporation [as provided by statute], but it furnished the data and caused the Atlantic and St. Lawrence Railroad Company to make a return of the gross transportation receipts over its road, 149½ miles in length, including the 82½ miles in Maine, for the years 1881 and 1882. And upon this return the governor and council, pursuant to the statute, ascertained the proportion of the gross receipts in the state and assessed the tax in controversy accordingly.

On appeal from the decision of the supreme court of Maine, the United States Supreme Court held that this tax was perfectly constitutional.

Can it now be argued from these facts that this decision overrules the former decisions of the Supreme Court on this point? The corporation that was taxed in this instance was not the Grand Trunk Railway Company, a foreign corporation, but was the Atlantic and St. Lawrence Railroad Company, a corporation organized under the laws of Maine and controlled

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by the Grand Trunk Railway Company of Canada. This latter corporation, of course, was obliged by the decision to pay the tax, but this was merely as a result of the fact that it controlled, through a lease, a domestic railroad corporation, whose franchise was, in accordance with the other decisions of the Supreme Court of the United States, within the jurisdiction of Maine. From these facts it will be seen that the actual point decided in this case was exactly that which had been decided in previous cases in the supreme court, *viz.*, that the states may impose a tax upon the franchise of a domestic transportation company, such tax to be measured by the gross receipts of such company whether such gross receipts are purely derived from interstate commerce or not.

It must, however, be admitted that the opinion goes much further than the facts would seem to warrant, and claims for the states the right to levy a tax upon both domestic and foreign railway corporations, such tax to be measured in amount by the gross receipts derived from both state and interstate commerce. But in accordance with strict rules of judicial construction, it cannot be said that the opinion of the judges, which is merely *dictum*, can be regarded as controlling, and what is authoritative in this decision is simply the actual point decided. Inasmuch, however, as decisions are often developed out of *dicta*, it will be well to consider somewhat in detail the *dictum* in this case, as a possible indication of the present tendency of the court. The Maine statute imposed the tax on the railway company as "an annual excise tax, for the privilege of exercising its franchises" in the state. Mr. Justice Field, who delivered the opinion of the court, says:

> The tax, for the collection of which this action is brought, is an excise tax upon the defendant corporation, for the privilege of exercising its franchises within the State of Maine. It is so declared in the statute which imposes it, and that a tax of this character is within the power of the state to levy there can be no question.

It will be noticed that Justice Field introduces a new theory for the constitutionality of a tax on railway gross receipts,

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namely, that the tax, in accordance with the wording of the taxing statute, is an annual excise tax. He goes on to say:

> The privilege of exercising the franchises of a corporation within a state is generally one of value, and often of great value and the subject of earnest contention. It is natural, therefore, that the corporation should be made to pay some proportion of the burdens of the government. As the granting of the privilege rests entirely in the discretion of the state, whether the corporation be of domestic or foreign origin, it may be conferred upon such conditions, pecuniary or otherwise, as the state in its judgment may deem most conducive to its interests or policy. . . . The character of the tax or its validity is not determined by the mode adopted in fixing its amount for any specific period or the times of its payment. . . . The rule of apportioning the charge to the receipts of the business would seem to be eminently reasonable, and likely to produce the most satisfactory results both to the state and the corporation taxed.

This *dictum* is hardly to be reconciled with the rule laid down in the Horn Silver Mining Company *vs.* New York and the Gloucester Ferry Company *vs.* Pennsylvania, which precludes a state from demanding taxes from foreign corporations engaged exclusively in interstate business as a condition of transacting business within the state; nor is it in accord with the decisions of the court that the states may not levy upon a foreign transportation company a tax to be measured in amount by the receipts derived from interstate commerce.

It is to be remarked, finally, that this decision was reached by merely a majority of the court, Justices Bradley, Harlan, Lamar and Brown dissenting from the conclusions reached. It is remarkable, however, that in neither the majority nor the minority opinion is any reference made to the distinction which the court had made in previous decisions between foreign and domestic corporations. The recognition of this distinction would seem to be the only method of reconciling the various decisions of the court upon this subject.

FRANK J. GOODNOW.

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THE ORIGIN OF THE STANDING-COMMITTEE SYSTEM IN AMERICAN LEGISLATIVE BODIES.

MR. BRYCE and Mr. Woodrow Wilson have familiarized us all with the knowledge that the transaction of business through standing committees is one of the most important peculiarities of the American legislative system — perhaps, indeed, its most distinctive peculiarity. Both in Congress and in the state legislatures, this is the system of procedure universally followed. It is therefore somewhat surprising that no attempt appears to have hitherto been made toward tracing completely the history of an institution of such obvious importance. Doubtless it is but one more illustration of the apathy with which students of American constitutional history have in former times regarded the history of all parts of our frame of government which have not been embodied in the document called the Constitution of the United States. So far as the writer knows, the history of the American standing committee before 1789 has not been treated at all. Its history after that time we know, — a history of gradual development from slight beginnings in the earlier Congresses, more especially in the House of Representatives. It seems to have been assumed that this is all. It is the object of the present paper to demonstrate that, on the contrary, the institution has a history extending far back into the past of the Anglo-American people, and to trace that history, from the procedure of the House of Commons under Queen Elizabeth, through that of the colonial legislative assemblies, down to the time of the Revolution and the assembling of federal congresses. No doubt there are two special reasons why this has not been done before : first, that the system, while it prevailed in earlier days in the House of Commons, long ago became virtually extinct in that body, so that observers in our own time have regarded it as a purely American invention ; and second, that it did not prevail in the

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colonial legislatures of New England, on which account those American historical writers who have been New Englanders —perhaps a majority of all — have overlooked the fact of its existence in times anterior to 1789.

The standing-committee system, in its modern form, involves the following particulars: the institution by a legislative body, (1) as a regular practice, of (2) several committees, (3) composed of its own members and (4) continuing in existence throughout the session, each of which (5) has charge of a specific division of the business of the house in such manner that all matters falling within that division are regularly and usually referred to that committee for preparative consideration previously to final action upon them by the house. Germs of such a system in the procedure of the English Parliament may perhaps be discovered in the practice, begun in the reign of Edward I and till as late as 1886 solemnly continued, of appointing at the beginning of the session two groups of triers of petitions, one for England, Ireland, Wales and Scotland, the other for Gascony and other lands and islands beyond the sea, whose duty it was to sift petitions, and to report to the law-courts, king and Parliament those which should properly be referred to each.[1] But a germ from which the standing committee is more distinctly to be derived is the committee especially appointed to frame a particular statute from a petition or bill. Of such, an instance is found in the records of the House of Commons as far back as 1340.[2] From the beginning of the printed journals of the House of Commons (1547), we find instances of the reference of bills to one or two members, and of other special committees, such, for example, as the committee of six appointed in the first year of Queen Mary, "to inquire for Alexander Newell, Burgess of Loo in Cornwall, Prebend of Westminster, if he may be of this House"; committees for conference with the Lords; or that committee consisting of "the Queen's Council with twenty-four of the shires and six of Wales," appointed in 1563 "for order to be taken concern-

[1] Stubbs, Constitutional History, II, 263; III, 452. Anson, I, 309, 310.
[2] Stubbs, II, 382; III, 466.

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ing the subsidy."[1] When Sir Thomas Smith, who died in 1577, wrote his famous treatise of the *Commonwealth of England,* committees for framing laws were already an essential part of the procedure of Parliament. In describing its organization, he says:

> The Committies are such as either the Lords in the higher House, or Burgesses in the Lower House, doe choose to frame the Lawes upon such Bils as are agreed upon, and afterward to bee ratified by the same Houses.

Again, in speaking of the course of business, he says:

> It chanceth sometime that some part of the Bill is allowed, some other part hath much controversie and doubt made of it; and it is thought if it were amended it would goe forward. Then they choose certaine Committees [*i.e.*, committee-men] of them who have spoken with the Bill and against it, to amend it, and bring it againe so amended as they amongst them shal thinke meet.[2]

It marks a distinct forward step in the development of the institution when, at the beginning of Queen Elizabeth's third Parliament, on April 6, 1571, we find a group of election cases, or a group of bills all relating to the same general subject, referred to a single committee.

> This Day Mr. Treasurer, Mr. Servients Manwood, Geffrey and Lovelace, Mr. Fleetwood, Mr. Bell and Mr. Mounson are appointed to confer with Mr. Attorney and Mr. Solicitor, about the Return of the Burgesses following; for that the same Towns returned no Burgesses the last Parliament, . . . And to meet To-morrow, at Afternoon, at Three of the Clock, in Mr. Treasurer's Chamber at the Court. — Upon a Motion for Uniformity of Religion, and the Mention of certain Bills drawn for that Purpose the last Parliament, and for Redress of sundry Defections in those Matters, a Committee is, by the House, appointed of these following. . . .

On the next day a still further step in development is taken by the appointment of a committee "to meet in the Temple Church on Monday next, at two of the clock in the afternoon," to "consider of those griefs and petitions, which had

[1] Commons Journals, October 12, 1553. D'Ewes' Journals, 80.
[2] Smith, Commonwealth (ed. 1633), pp. 79, 93.

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been touched and mentioned in the former dispute," namely, that concerning ecclesiastical affairs.[1] Here we for the first time find a committee charged, not with a single bill or set of bills, but with a general subject, with an entire division of the business of the house. In the same session we observe the appointment of what in modern American slang would be termed a "steering committee," certain members being made "Committees for appointing such bills for the common-weal as shall be first proceeded in, and preferred before the residue, but not to reject any."[2] D'Ewes comments on this as a rare precedent, and one that "may prove worthy of often imitation"; but it seems not to have been followed until, more than a century later, the same idea found expression in the development of the modern cabinet.

In the committees mentioned we find the germs of three of the great committees of subsequent times — the committee of privileges and elections, the committee of religion and the committee of grievances. But apparently they did not continue in the exercise of their functions throughout the session,[3] nor do we find an equally developed arrangement in operation during the first two sessions of Elizabeth's fourth Parliament. Yet of the increasing importance of committees of some sort we find an evidence in its third session, in the mention of the "committee chamber of this house."[4] At this session (February 24, 1580–81), a committee of elections was appointed, charged with more comprehensive functions than its predecessors; for it was ordered to examine all the election returns of the session and the orders and precedents formerly used in like cases, and to make report to the house accordingly.[5] In the next Parliament, that of 1584–85, there is a committee to consider what statutes shall be continued beyond the end of the present session, a committee to consider the petitions and grievances of the house regarding religion, and a committee on the penal laws.[6]

[1] Commons Journals, I, 83. D'Ewes, 156–158.
[2] D'Ewes, 179.
[3] See Commons Journals, April 28, 1571.
[4] D'Ewes, 302, 305.
[5] Commons Journals, I, 129, 135. D'Ewes, 307.
[6] D'Ewes, 334, 339, 340, 344, 345, 355, 361, 366.

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But the main interest, for our subject, of this and the next three Parliaments lies in the development of the standing committee of privileges and elections. It was perhaps natural that this should be the first of the standing committees to attain full development, partly because of the nature of its business, involving many questions too detailed and complicated for discussion in the whole house, partly because of the increasing vigor with which the Commons were in this reign beginning to assert their privileges, among others that of determining all matters relating to their own elections. The committee mentioned as appointed in 1571 was simply a committee of elections. On February 13, 1584–85, the Recorder of London and two other members were appointed a committee on the

> State and manner of the serving of Process upon any of the Members of this House from time to time during this Session as occasion thereof shall fall out, and after such information and intelligences thereof then further to impart the same to this House as occasion shall serve for further resolution.

A few days later we find this body called the committee of privileges: "Mr. Cromwell was added to the former comittees for priviledges, and touching serving of process upon the members of this house and their servants."[1] In the next Parliament, that of 1586 and 1587, "Mr. Recorder of London . . . moved also that a like committee of this House may at this time be appointed, as had been the last Parliament, for the examining and reporting cases of priviledge," which was accordingly done.[2] Neither of these two Parliaments seems to have had a committee of elections. That of 1589 had both a committee of privileges and a committee of elections. On February 8, 1588–89, the following entry appears:

> Upon a motion this day made by Sir Edward Hobby, touching the sundry abuses of returning the Knights and Burgesses into this House this present Session of Parliament, as in some not returned at all, some others returned erroneously, and for some places for which none hath been returned heretofore, and some returned superfluously,

[1] D'Ewes, 349, 355. [2] *Ibid.*, 393.

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as two for one place and one for two places, and other corrupt courses in sundry of the Returns, to the great prejudice both of the liberties and also of the service of this House; it is ordered that it be committed unto [ten members and] Mr. Rowland Watson, Clerk of the Crown, and that he do attend as well with the Returns of the Sheriffs as with his own Book of the same Returns certified by him into this House, and to meet in the Exchequer Chamber upon Monday next at three of the Clock in the Afternoon.[1]

At the beginning of the eighth Parliament of Elizabeth the final step is taken; these two functions are fused, and confided to the charge of one and the same committee. The record for February 26, 1592–93, recites:

Upon a Motion made by Sir George Moore touching some questions for the manner of Election of one Richard Hutton, returned into this House one of the Burgesses for the Borough of Southwark in the County of Surrey. . . . And upon another Motion thereupon also made by Mr. Wroth for a Committee for the Liberties and Priviledges of the Members of this House and their Servants, it is upon the question Ordered, that all the Members of this House being of her Majesties Privy-Council, Sir William Moore, Mr. Serjeant Yelverton, Mr. Robert Wroth, . . . Sir George Moore, Sir Walter Raleigh, Sir Francis Drake, Mr. Tanfield, Mr. Francis Bacon [and others] shall, during all this present Sessions of Parliament, examine and make report of all such Cases touching the Elections and Returns of any the Knights, Burgesses and Barons of this House, and also all such Cases for priviledge as in any wise may fall out during all the same Sessions of Parliament.[2]

In this committee, with its roll of distinguished names, we have evidently the first fully-developed standing committee of the modern American type. In D'Ewes' journals of the same Parliament, a reference to a "general committee" appears to be the first mention of a committee of the whole; yet since the passage shows that in such committee the speaker left the chair, we are warranted in supposing that the procedure in committee of the whole was already well determined.[3]

[1] D'Ewes, 429–431. [2] *Ibid.*, 471; see also 479, 489.
[3] D'Ewes, 492, 493, 499; see also 630, 631. Heywood Townshend, Historical Collections, 198–200.

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When the Parliament of 1597 and 1598 came together, the practice begun in the last Parliament seems to have been regarded as a matter of course.

> Mr. Speaker putteth the House in remembrance for a Committee to be nominated to deal and travel in the examination of such Causes as shall occur in this House touching Priviledges and Returns during this present Sessions of Parliament, and from time to time to make Report to this House of their travel and proceedings therein, as occasion shall serve.

And a committee of about forty members was appointed, which served throughout the session.[1] The same Parliament had likewise a committee for the continuance of statutes.[2] D'Ewes notes it as a thing scarce to be patterned that in this Parliament a certain committee "had at one and the same time eleven bills in agitation before them, though all upon the matter tending to a like end and purpose."[3] The Parliament of 1601, the last of Elizabeth, had the same standing committees as its predecessor;[4] in the first Parliament of James, 1603–4, the famous cases of Goodwin and Sherley, the former involving a conflict with the crown, brought the house at once to the appointing of its committee of privileges and elections, and a comment in the Commons Journal declares that "this is a usual motion in the beginning of every Parliament."[5]

Assuming the standing committee to be by this time an established device of English parliamentary practice, let us seek such light as can be obtained upon the procedure of these committees in those early days. The mode of their appointment is described by D'Ewes, a member of the Long Parliament, "according," he says, "to the usual form, both then doubtless used, and at this day also."[6] The committee having been resolved upon, the speaker

[1] D'Ewes, 552, 553, 556, 558, 570, 572.

[2] Townshend, 104. D'Ewes, 555, 568, 572. Frequent subsequently; Commons Journals, I, 152, 177, 935, 457, 518.

[3] D'Ewes, 561.

[4] Townshend, 194, 282, 285, 290. D'Ewes, 622, 666, 684.

[5] Commons Journals, I, 149, 934.

[6] D'Ewes, 44. See also Townshend, 212; D'Ewes, 637.

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did put the House in mind to name Committees [*i.e.*, committeemen]. And thereupon every one of the House that listed, did name such other Members of the same, to be of the Committee, as they thought fit; and the Clerk either did, or ought to have written down as many of them as he conveniently could; and when a convenient number of the Committees named were set down by the Clerk, then did the Speaker move the House to name the time and place, when and where they should meet, which the Clerk did also doubtless then take a note of, and did also (Silence being made in the House) read out of that Book or Paper (in which he had entred them) the Committees names, with the time and place of their meeting.

In the Parliament of 1604 a member proposed the lot as a more satisfactory means of selection, but the suggestion was not adopted.[1] In 1601 the rule was made that one who had spoken against a bill could not be a member of the committee upon it, though a member of the committee might speak against it after their report.[2] Upon the appointed day of meeting, the clerk gave to one of the members a list of the names, together with a minute of the scope of the committee's authority and the time and place of its meeting; but the committee had the power to alter the last two, as well as to appoint sub-committees.[3] The committees seem always to have met in the afternoon, Parliament sitting in the morning. Places in which they sat were, besides the committee chamber already mentioned, "the Treasurer's Chamber at the Court," *i.e.*, the chamber of the Treasurer of the Household, the Star Chamber, the Temple Church, the Exchequer Chamber and the Court of Wards.[4] In the Parliament of 1601 Sir Edward Hobby complained that never more than three or four members came to the sittings of the committee of privileges; in the next Parliament the rule was made that eight should constitute a quorum of any committee.[5]

[1] Commons Journals, I, 172.

[2] Townshend, 207–209. D'Ewes, 634, 635.

[3] Commons Journals, I, 150, 153, 273.

[4] Commons Journals, I, 83, 150, 151, 215, 976. D'Ewes, 80, 156, 158, 430. Townshend, 285.

[5] Townshend, 285. Commons Journals, I, 169, 944.

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An interesting glimpse into a committee-room is afforded us by Heywood Townshend, a member of the Parliament of 1601. Though it seems to be a committee of the whole house of which he is speaking, the picture is probably not less true of special committees. After certain remarks by Sir Walter Raleigh,

> Sir Edward Hobbie said, We cannot hear you speak out; you should speak standing that so the House might the better hear you. So Sir Walter Raleigh said that being a Committee, he might speak either sitting or standing, and so repeated over again the former Speech. Mr. Secretary Cecill said, Because it is an Argument of more Reverence, I choose to speak standing.

Later he interrupts his speech to say:

> If there be any that sits next the Door that desires to sit next the Chair to give his opinion, I will not only give him my place, but thank him to take my charge. This [says Townshend] was conceived to be Sir Edward Hobbie, who coming to sit near the Chair and none giving him Place, sate next the Door.[1]

From King James's first Parliament on, the House of Commons had constantly a standing committee of privileges and elections, appointed at the beginning of each session. This is the only select committee which is found existent in every session from the accession of the Stuarts to the outbreak of the Civil War. In the Parliaments of King James, grievances and matters of religion were confided, now to select committees, now to "grand committees," or, in modern parlance, committees of the whole. An intermediate plan is that of that general committee of grievances which was moved by Sir Edwin Sandys in the Parliament of 1610, and which consisted of the king's privy council, the first knight of every shire, all the lawyers of the house, the first burgess of every borough and Sir Edwin Sandys.[2] The Parliament of 1621 added two new committees of the whole. By reason of the great sums of money needed if England was to participate in the Bohemian war, it instituted a committee on the

[1] Townshend, 198, 199. D'Ewes, 630. [2] Commons Journals, I, 394.

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decay of trade and want of money; by reason of the abuses charged against certain courts, especially that of the Lord Chancellor Bacon, it instituted a committee of courts of justice, "to question all courts of justice, ecclesiastical or temporal."[1]

With these additions the House of Commons completed its system of grand committees, or committees of the whole. Religion, grievances, trade, courts of justice — these were the four grand committees which, from this time on, we find maintained in most Parliaments, together with a select committee of privileges and returns. A grand committee of religion seems not to have been appointed in 1621, nor is it clear that the complete system was in operation in the last Parliament of James (1624) or the first of his successor (1625), though in the latter there was a long debate on the subject.[2] In 1626 the house appointed a standing committee of religion, "and every one that will come to have voice."[3] But in the third Parliament of Charles (1628) the system above indicated came into complete operation. It was again employed in the Short Parliament, and at the beginning of the Long Parliament.[4] At the Restoration it was resumed, as we shall see, and it continued for more than a century and a half to be the typical form of organization of a House of Commons. Of the five committees mentioned, four were indeed committees of the whole. Yet the history of their development has formed a proper part of our investigation because, as will be seen later, all five were alike ancestors of the first standing committees in American legislative bodies.

How rapidly the plan commended itself to the Commons may be seen from a passage in the debate respecting the appointment of a committee in 1625. Some, the reporter tells us,

were unwillinge to departe from the customes of the House by relinquishinge their committees; but Sir G. More affirmed that this is a

[1] Commons Journals, I, 514, 572. Proceedings and Debates, 1621 (1766), I, 27, 98; II, 175.

[2] Commons Journals, I, 800. Gardiner, Debates of 1625, pp. 7–11.

[3] Commons Journals, I, 817.

[4] *Ibid.*, I, 873, 920, II, 3, 4, 17, 20, 21.

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custome of a late beginninge, and that in Q. Eliz. tyme noe such committees were appoynted but upon particular occasions.[1]

When, in the Parliament of 1621, it was proposed that three committees should sit during the Easter vacation, one to consider the bills, the second the petitions against courts of justice, the third the petitions of grievance, the same authority objected to this disposal of the bills, declaring that it was not fit nor ever, to his knowledge, used.[2] In 1625 it was resolved that the committee of privileges should "hear counsel and witnesses, and send for any records"; in 1626 the committee of religion was empowered to send for any persons, books or records necessary to their information.[3] In the same Parliament a select committee was appointed "to consider of an indifferent course for naming of committees."[4] At the beginning of the Long Parliament it was moved "that every man that names one for a committee, shall stand up, and, being uncovered, name the party."[5] Throughout the reigns of James and Charles, grand committees exercised the power of appointing sub-committees. On the other hand, select committees were often reinforced by volunteer associates, by distinct provision of the house that all that would come should have voices. The meaning of this phrase was discussed in the Parliament of 1621. Sir George Moore declared that in case the vote had passed in this form all members might come to give the committee information, but that only those should have votes who had been named members of the committee; that this was the ancient and best course. It was maintained by another member that a provision allowing all members voices was a valuable remedy for the "inconvenience of not putting in those which sit far off from the Chair." Members were still nominated by other members; it is mentioned that Mr. Speaker is to name no committee. Finally the house resolved "that, when limited, all that will come shall have voice, that they, in that case, if they come, are committees,

[1] Gardiner, Debates of 1625, p. 11.
[2] Commons Journals, I, 572.
[3] *Ibid.*, I, 800, 818.
[4] *Ibid.*, I, 829.
[5] *Ibid.*, II, 24.

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as well as those nominated." But in the next Parliament it was voted that this was not the rule in the case of the committee of privileges.[1]

With the opening of the Long Parliament, the importance of the committees increased. When it had been sitting about two months, the house required the warden of the fleet to "take some course, that the rooms where the committees sit be not so thronged and pestered with unnecessary multitudes, that the committees themselves can neither get in nor out,"[2] a sign of increasing interest in their deliberations. Committees multiplied to excess, but most of them were temporary, expiring with the arrival of the house at a particular stage in its reformatory work. Such, for instance, were the committees on Strafford, on Laud, on the Remonstrance, on ship-money and on the Star Chamber. Parliamentary committees, either of the Commons or of Lords and Commons jointly, came to have great power, especially from the time when the rupture with the king and the outbreak of civil war threw executive business of great importance upon the houses. From this time on, and in the period of the Commonwealth, the government of England was government by committees. But the system was different from that hitherto existing. The grand committees seem to have fallen into abeyance, though the committee of elections continued. The most important committees of the years from 1642 to 1656 were the committee for the advance of money, the army committee, the committee for taking the accounts of the kingdom, the sequestration committee, the committee of safety, the committee of both kingdoms, and the committees for plundered ministers, for removing obstructions in the sale of delinquents' lands, for the relief of those who surrendered on articles of war, for compounding with delinquents, for indemnity, and for the sales of fee-farm rents or crown lands.[3]

[1] Commons Journals, I, 616, 617, 671. Pettyt, Lex Parliamentaria, 331.

[2] Commons Journals, II, 65, 88.

[3] *Ibid.*, II–VII. (The first mention of the term "standing committees" which I have met in the Journals is at VI, 20, under date of September 13, 1648.) *Cf.* also Mrs. Everett Green's prefaces to her Calendar of the Proceedings of

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The Barebones Parliament of 1653 had naturally no committee of elections. It began with committees on Irish and Scotch affairs and the public revenue. It was characteristic of its temper that it chose not to revive the old scheme of committees, but on the eleventh day of its session appointed a committee for the right ordering and disposing of business by committees, whose effort was, systematically to arrange the business in classes and to confide each to a select body. The arrangement adopted by the house established, in addition to the three already mentioned, committees on the law, on the army, on petitions, on trade and corporations, and for receiving propositions for the advantage of the commonwealth, for the poor and for regulating commissions of the peace, on the public debts, on prisons, on titles, and on the advancement of learning.[1] This was a scheme of select standing committees much resembling the modern American plan. But Cromwell's Parliament of 1654 was of a more conservative disposition. We are told by a member that when, at the very beginning of the session, debate arose as to the Instrument of Government, some members objected that this was out of order,

> in regard by the ancient orders Committees, especially their general Committees of Privileges, which concern the being, and of religion, grievances and courts of justice, which concern the well-being, of the Parliament, ought in the first place to have been settled.[2]

The Parliament was evidently disposed to revert to the "ancient orders." It appointed its standing committee of privileges, and, among other committees, grand committees of religion and trade. With the second Parliament of the Protectorate (1656–58) we find the House of Commons, in the same conservative spirit which inclined it to revert to monarchical institutions, completely restoring the old system of committees. Though it retains standing committees for Ireland and for

the Committee for the Advance of Money, and her Calendar of State Papers, Domestic, 1649–1650.

[1] Commons Journals, VII, July 11, 20, 21, 1653.

[2] Notes of Guibon Goddard, printed in the Diary of Thomas Burton (ed. 1828), I, xxi.

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Scotland, and for one or two financial matters, it institutes, as Parliaments had done before the Civil War, a select committee of privileges and returns, and grand committees of religion, grievances, trade and courts of justice. The same course is pursued by Richard Cromwell's Parliament, and, in part, by the Convention Parliament of Charles II. From the meeting of his second Parliament in 1661 down to the session of 1832, with scarcely any exception, at the beginning of each session the House of Commons appointed a number, generally from one hundred to three hundred, of its members to be a committee of privileges and returns, and appointed committees of the whole house for religion, grievances, trade and courts of justice. In the tenth session of the Cavalier Parliament, February 27, 1672–73, it was voted that all members of the house who should come to the sessions of the committee of privileges, should have voices. It had not been so voted before; it was so voted in each instance thereafter.[1]

It was in the days of the later Stuarts that the Parliamentary system of committees made its transit from England to the American colonies. The subsequent history of the system in the House of Commons has no bearing on American institutions. Yet it is worth while to narrate it briefly, if only for the sake of explaining the absence of standing committees from the modern Parliamentary system of Great Britain. The story is a story of decline and neglect. If it seems remarkable that this should be so, in view of the obvious convenience of the standing committee as an instrument for the speedy transaction of legislative business, the explanation is not far to seek. The fact is that England, during the century which followed the Restoration, was gradually developing her system of cabinet government. Now the English cabinet is essentially an executive committee of the legislature, so organized that, in each department of governmental activity, the work preparatory to legislation is performed by a particular member of this committee and his official subordinates. Such a system makes less necessary the maintenance of standing committees of the legis-

[1] Commons Journals, VII *et seq.*

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lature, charged each with a particular branch of the public business. In the House of Commons they did not develop, after the reign of Charles II, beyond the stage which they had reached in that reign, as already described. In fact, they receded from that point. For in 1708 the house resolved that all matters that should come in question touching returns or elections, should be heard at the bar of the house.[1] The ancient committee of privileges and elections continued, however, to be appointed, and indeed is still appointed at the beginning of each session; but it neither meets nor transacts any business. In 1780 a case of a peer's interference in an election came before it and was reported upon. A minute in Lord Colchester's *Diary*, under date of 1827, states that the committee had not then sat for forty or fifty years. It was again called upon to act in 1847, upon the alleged interference of Earl Fitzhardinge in the election for West Gloucestershire. But if no such special reference is made, it is not appointed to sit. As for the ancient grand committees of religion, of grievances, of trade and of courts of justice, they have been entirely discontinued since 1832. In form, they had continued to exist up to that date; for instance, Fox's great speech on the libel laws in 1791 was made upon the formal motion "that the Grand Committee for Courts of Justice do sit on Tuesday next."[2] In reality, however, the committees had long since fallen into disuse. A curious proof how entirely unfamiliar the system had become to others than experts in Parliamentary procedure, is afforded by a minor poem of Thomas Moore, entitled "Religion and Trade." It is headed by a quotation from a debate on church extension, May 22, 1830: "Sir Robert believed it was necessary to originate all legislation respecting

[1] Commons Journals, February 18, 1708. Sir William Anson, Law and Custom of the Constitution, I, 151, appears to be in error in saying that "finally, in the time of Speaker Onslow (1727–61), the confidence felt in him caused the parties to these (election) suits to ask a trial at the bar of the House." The vote cited was passed in the time of Speaker John Smith.

[2] May, Parliamentary Practice, 373. Lord Colchester's Diary, III, 481. Commons Journals, CIII, 139. Hansard's Debates, 3d series, vol. 95, cc. 1072, 1354. May, Constitutional History, II, 120.

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religion and trade in a committee of the house";[1] and the opening lines are as follows :

> Say, who was the wag, indecorously witty,
> Who, first in a statute, this libel convey'd ;
> And thus slily referr'd to the self-same committee,
> As matters congenial, religion and trade ?

Readers of what has preceded will perceive that Peel's remark implies no such reference to the "self-same committee"; but perhaps poets cannot be expected to know even so much of Parliamentary law as that the rules of the House of Commons are not "convey'd in statutes."

The recent attempts of the Commons to revive the standing committee system do not demand notice; and it is time to turn to the history of that system in the American colonies. In New England one does not find it existing at any time before the Revolution, and this, as has been suggested in the introduction, is doubtless one reason why its colonial history has not been followed. Committees charged with individual bills or matters of business, such as the auditing of the treasurer's accounts, are indeed found in all four of these colonies, but no system of standing committees; which is the more remarkable inasmuch as the colonial legislatures of New England were mostly much larger bodies than those of the colonies to the southward. In Connecticut the only standing committee to be noticed is that grand committee, or council of war, which, at intervals from 1673 on, was appointed and vested with extensive powers during the recess of the legislature.[2] Once (1729) the General Court of Massachusetts had a committee which is referred to as the committee of grievances. In nearly every Massachusetts house from 1715 to 1730 there is a committee of petitions. And on several occasions a committee is appointed to consider what acts that

[1] Under this date I find no such debate in Hansard. But on May 22, 1828, I find that Peel spoke on the abolition of church briefs (Hansard, 2d series, vol. 19, cc. 872–876), and this is no doubt what Moore refers to, though Hansard does not report these particular words.

[2] Colonial Records of Connecticut, II, 204, 205.

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are expired or near expiring are proper to be re-enacted or revived, and what may be proper to be made; this is sometimes called the committee for laws.[1] But the practice did not increase, nor was it organized into a system. Large as its numbers were, the house itself examined election returns.

The American system of standing committees, borrowed from England, was developed in the colonial assemblies of the middle and southern colonies, but earliest in Virginia and Maryland. It is true that the plan of appointing committees, more or less permanent, for the better despatch of the business pressing upon an assembly, was not a recondite or unnatural device. Virginia, for instance, had committees for the revisal of the laws in 1656, 1658, 1659 and 1661; committees of private causes in 1656 and 1659, and at least down to 1680, when appeals to the king in council began; a committee of audit in 1660; and "public committees" to sit during the recess of the House of Burgesses in 1661, 1662 and 1663.[2] Even the small legislatures of Barbadoes and Bermuda had such committees at early dates.[3] But that the system was in reality founded in imitation of that of England, is proved by the fact that in those colonies where it obtained its earliest and fullest development, the names and functions of the committees resemble closely those of the five English committees whose history we have been following. Particularly is this the case in the Virginian House of Burgesses. In 1663, a few years after the English committee system assumed its final form, we find a committee of elections. In the same year a grand committee is mentioned; but this seems to have been an ordinary committee of the whole, not an analogue of the four grand committees of the House of Commons.[4] Virginia developed committees corresponding to these four, but they were select committees. In 1677 we discover from a clerk's petition the existence of a committee of propositions and

[1] Journals of the House of Representatives of Massachusetts, 1715–1738.

[2] Hening's Statutes at Large, I, 421, 495, 512, and II, 34; I, 422, 512, 545, and II, 31, 147, 198; Mass. Hist. Soc. Coll., V, 139, 147.

[3] Calendar of State Papers, Colonial, I; II, 126; III, 482, 1126.

[4] Hening, II, 198, 204.

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grievances, with a clerk having a salary of fifty pounds sterling; the same committee reappears in 1684. In 1677, also, and again in 1679, 1691 and 1697, there is mention of a committee for public claims.[1] The same committee appears, along with a committee of elections and privileges and one of propositions and grievances, in the single early manuscript journal which chance has preserved at Richmond, that of the session of 1693. These three are noted in 1696–98 as constituting the usual system.[2] A petition to the House of Burgesses, in 1689, from one Lancelott Bathurst, shows him to have been clerk of a committee of grievances, of a committee for private causes and of another more exceptional committee. The committee of propositions and grievances appears again in 1710.[3] Thus all through the sixty years preceding the commencement of the printed journals of the Burgesses we catch glimpses which assure us of the existence of a well-developed system of standing committees, plainly founded on the committee system of the House of Commons. When the printed journals begin, in 1732, we find already established a regular system of four standing committees, one for privileges and elections, one for propositions and grievances, one for courts of justice and one for public claims. These four, three of which, it will be observed, bear names borrowed from the House of Commons, are found in all but a few of the briefest sessions of the Burgesses from this date to that of the Revolution. In 1742 another of the traditional committees of English procedure is added, by the institution of a committee of trade, henceforth always a part of the scheme. In the memorable session of 1765 a committee of religion was added.[4] Thus, as the numbers of the house increased, the system received its completion upon strictly English lines.

The history of the institution in Maryland extends nearly as far back as in Virginia. In 1678 we find the assembly possess-

[1] Virginia Calendar of State Papers, I, 11, 29, 55. Hening, II, 421, 455; III, 26. Fifty pounds was also in 1732 the salary of a clerk of a standing committee; Journals.

[2] Mass. Hist. Soc. Coll., V, 147.

[3] Virginia Calendar of State Papers, I, 22, 144, 145.

[4] Journals of the House of Burgesses, 1732–74.

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ing a committee of privileges and elections, apparently a select committee, but the record is mutilated; a committee of laws is also mentioned. In 1682 a committee of trade appears at both sessions. Finally, in the autumn session of 1683, it is "voted that a committee of priviledges and eleccōns be appoynted to enquire of such matters as are usually enquired of by committees of that kind"; a form of phrase which supports the theory of conscious borrowing. It is also "voted that a committee for incouragement of trade be appoynted"; and a committee for inspecting the laws is also mentioned. These are from the early journals recently printed in the Maryland Archives.[1] The next journals of the lower house of Maryland which are at present accessible to the writer are those of 1753–59. Upon inspection of them we see that meantime the system has developed somewhat differently from that of Virginia, though upon the same general lines. The committees are not reconstituted at the beginning of a new session of the same house, as in Virginia, but the same members are continued upon them. Grievances (or "aggrievances") and courts of justice are united in the charge of the same committee. A committee of laws has charge of proposed new legislation, and the discussion of "laws that are expired or near expiring," which in Virginia was the affair of the committee of courts of justice, in Maryland belongs to this committee of laws. But this was not always appointed. Those that are to be found in each session are the committee of elections and privileges, the committee of aggrievances and courts of justice and the committee of accounts. A committee charged with the inspection of the public offices appears in 1757 and 1758, and others arise from the exigencies of the French war.[2]

Penn's Frame of Government, of 1682, in its thirteenth section provided for a division of the council of Pennsylvania into four committees. But the regulation was soon made that

[1] Assembly Proceedings, esp. p. 526.

[2] Votes and Proceedings of the Lower House, 1753–59, in the library of Harvard University.

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the matters so provided for should be attended to by the council "as their numbers will give leave."[1] It does not appear that the division into committees was ever carried out. If so, it was for but a short time; and presently a smaller council was substituted for that originally devised. The lower house also set out with an intention of transacting its business through standing committees, after the manner of the House of Commons. The first entry in its minutes is of the appointment of five members to be a committee of elections and privileges. Six others were named a committee for justice and grievances. A committee charged with the preparation of bills, and called the committee of foresight, was also chosen. A grand committee, or committee of the whole, is mentioned, and it is declared that the rules of the body shall be modeled upon those of the House of Commons. This was at the session beginning in December, 1682. At the beginning of the first session of the next assembly, convening in the next month,

> the Speaker reads to the House the orderly Method of Parliaments, and the Demeanour of the Members thereof observed in England, which he recommended to them, as civil and good; As also the Method observed by the English in Committees.

But in fact no standing committees were appointed in this session or in the next. The method was perhaps thought unnecessary in an assembly of only fifty-four members. At all events, with the exception of a committee of privileges and elections in 1684 and an occasional committee of grievances (1689, 1694, 1695, 1704), we find no standing committees in the lower house of the Pennsylvania legislature until 1720. In that year a committee of public accounts began to be appointed, and in 1722 a committee of grievances. From 1744 to 1775 there is in every session a committee of correspondence, a committee of public accounts and a committee of grievances or aggrievances. In certain years we also

[1] Minutes of the Council, I, 59.

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find a committee on laws which have expired or are about to do so.[1]

Apparently the next colony in which the standing-committee system was developed was North Carolina. The early records of the legislature are imperfect. In the session of 1725–26, when we first find a journal of the lower house, that body has, before its session ends, committees of the whole on elections and on propositions and grievances. The latter, and a joint committee of accounts, appear in 1731. But in 1733 we find select committees of propositions and grievances and of public claims. Later, one of public accounts is added, and the assemblies immediately preceding the Revolution have also standing committees of privileges and elections.[2]

In the legislatures of Pennsylvania, Maryland, Virginia and North Carolina, the lower houses consisted during the eighteenth century of from fifty to a hundred members. That of New York comprised hardly more than twenty-five members, and had no urgent need to divide into committees. For instance, election cases were at first decided by the house, and not in grand committee. In 1699 there was a committee of elections, and select committees of accounts and of grievances. But from this time to 1737 we find few sessions in which there is more than one committee of the sort which we have been considering, no session in which there are more than two. In some sessions there are none. When there is a committee, it is either of elections or of grievances.[3] In 1737 the New York assembly falls into line with the practice of the House of Commons by instituting a select committee of privileges and elections, and grand committees of grievances, courts of justice and trade. From 1743 on, this system is found applied in every session down to the Revolution.[4]

The lower house of the legislature of New Jersey, a comparatively small body, remained without a system of standing

[1] Votes and Proceedings, esp. December 4, 1682, January 14, 1683.

[2] Colonial Records of North Carolina, II, 612; III, 260, 291, 566; IX, 450, 451, 739.

[3] Journals of the General Assembly of New York, I, 87, 95, 96, *etc.*

[4] *Ibid.*, I, 703, 704; II and III, *passim*.

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BRITISH LOCAL FINANCE.[1]

PART I.

ENGLAND AND WALES.

CHAPTER V. *Treasury Subventions and Allocated Taxes.*

TABLE IX[2] contain[illegible] the Parliamentary grants in relief of local taxatio[illegible]ond list of charges of a local nature borne by Parliar[illegible]es. The dates at which the grants and payments were [illegible]are also given, in order that the table may have an hist[illegible] A referen[illegible]e to it will show that these grants are who[illegible]ern origin, and that

[1] Since the final revision of the proof-shee[illegible] Chapters I to IV (see this QUARTERLY for March, p. 78) the Local Governme[illegible] Act, 1894, has been passed. It will come into operation before the end of the present year, and will effect considerable modifications of the system of local government now existing in England and Wales. Amongst the chief of these will be the creation of parish councils in all but the least populous of the rural parishes, the substitution of urban and rural district councils for the urban and rural sanitary authorities (other than the town councils in boroughs; chap. i, p. 87), the supersession of the parish vestries and churchwardens (chap. i, p. 81) in civil affairs, the abolition of *ex-officio* and nominated guardians of the poor, the abolition of plural voting (*i.e.*, extra votes in respect of the ownership of real property) in elections and other polls, and the prescription of voting by ballot. The general effect of these changes will be the complete democratization and reorganization of parochial, union and district government upon large and liberal lines. These areas will in future enjoy a system of popular local self-government, harmonizing in form and spirit with the systems established in the boroughs in 1835 (chap. i, p. 85) and in the counties in 1888 (chap. v, *infra*, pp. 269, 271).

The financial arrangements hitherto existent will not, however, be greatly affected by the passing of the act. The expenses of the rural parish councils will be met by the issue of precepts to the overseers and the levy of enlarged poor rates (chap. ii, p. 90, and appendix, Table I, p. 108). The highway rates in rural parishes not embraced in highway districts will no longer be separately levied by the surveyors of highways (chap. ii, pp. 85 and 89, and appendix, Table II), but will be merged in the precept rates of the rural district councils for general expenses (chap. i, p. 87). This change will still further swell the total of the sums raised as "poor rates," but will put an end to the highway rate as a separate and distinct tax in England and Wales.

[2] See this QUARTERLY for March, pp. 115, 116.

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select committees throughout its history, though in 1771 we find a vote for a committee of grievances, which was to be a committee of the whole house.[1] Concerning Delaware, South Carolina and Georgia the writer has no information. Doubtless enough has been gathered to establish his main points without these. It may be interesting to add, from a journal of the lower house of Jamaica in 1775, that that body then had select standing committees of privileges and elections, of grievances, of courts of justice, of public accounts, a committee to inspect the public offices [illegible] committee on laws expiring.

It does not fall within the scope of the present paper to trace the history of the committee, as an element in American legislative [illegible] in times subsequent to the outbreak of the Rev[illegible]ts history in the Continental Congress is familiar, [illegible]its development in the federal Congress, from the [illegible]eginning made in the House in 1789 down to the ful[illegible]mpletion of the system about the time of Speaker Clay. Indeed, as was said at the beginning of the article, this is the one part of the history of the system which has been studied. It will probably now be regarded as proved that the system originated long before 1789, and came by direct descent from England through certain of the colonial legislatures, five of the most important of which already made use of the procedure by standing committees when the Revolution occurred. As for those which did not, it appears that they gradually fell into line, under the influence of the federal legislature and of the legislatures of the other states. For instance, the Massachusetts legislature is shown by its manuscript journals to have had a few standing committees just after the close of the Revolutionary War, while its first little printed book of rules shows that it was provided with a pretty complete set in 1805.

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[1] Journals of the Legislature of New Jersey.

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PAYMENTS TO THE LOCAL TAXATION ACCOUNTS IN THE YEAR ENDED 31ST MARCH, 1892.[1]

	LOCAL TAXATION ACCOUNTS.			TOTAL PAYMENTS.
	ENGLAND.	SCOTLAND.	IRELAND.	
1. LOCAL TAXATION (customs and excise) DUTIES:				
1. Customs:	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Additional beer duty (3d. per barrel) . .	331 10 6	47 5 7	38 8 2	417 4 3
Additional spirit duty (6d. per gallon) . .	169,438 3 6	23,299 – 1	19,058 14 8	211,795 18 3
2. Excise:				
Additional beer duty (as above)	323,004 14 4	44,038 3 –	31,613 – 7	398,655 17 11
Additional spirit duty (as above)	632,845 19 11	88,391 6 6	64,320 3 6	785,557 9 11
2. ESTABLISHMENT, LIQUOR AND OTHER LICENSES (including penalties)	3,062,304 10 4	329,432 16 10	– – –	3,391,737 7 2
3. MOIETY OF PROBATE DUTY	2,238,934 13 6	310,503 10 4	244,230 3 –	2,793,668 6 10
	£6,426,859 12 1	£795,712 2 4	£359,260 9 11	£7,581,832 4 4

[1] Finance Accounts: year ended 31st March, 1892.

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their present magnitude is chiefly of recent growth. The history of these grants and transferred charges is one of successive concessions to the demands of the landed interest; for although the population of the towns has shared to a limited extent in the relief obtained, the agitation in Parliament, and outside, has been conducted almost entirely by the country party. The grants made in 1846 by Sir Robert Peel were avowedly designed for the advantage of the agricultural interests, and those conceded in 1874 and 1882 had a similar object. The great additions in 1888, 1889 and 1890, although made under pressure which came chiefly from the same quarter, were distributed with due regard to the claims of both urban and rural communities. They were also accompanied both by a reform of some of the local authorities and by a change of the form of many of the grants. A comparison of the last two columns of the table will show that most of the grants to the local authorities, except those in respect of education, have been withdrawn, and certain specific taxes substituted. The amounts thus transferred for the year 1891–92 are shown by the following table (see next page).

The discontinued grants actually received by the local authorities in England and Wales during the financial year ended March 31, 1888 (including £249,342 received in that year for the first time) amounted to £2,851,850. The additional relief given in that portion of the United Kingdom was therefore £3,575,010. The ceded taxes are wholly managed and collected by the officials of the national government, but the proceeds are periodically transferred to special accounts at the Bank of England, and distributed therefrom amongst the local authorities. The English distribution is in the first instance made to the county councils (created in 1888) and the councils of such municipal boroughs as have had conferred upon them the rank of independent counties; these embracing between them the whole of England and Wales. As these county and borough councils are purely representative bodies, and possess the confidence of the people, the expenditure of these large sums of national money by them would appear, on

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the face of it, to be a less risky experiment than it would have been before the reform of county government in 1888, or if the distribution were made to bodies of a lower rank or of a non-representative character. This is, however, not wholly a correct inference. A large part of the English share of the transferred taxes is passed on by the county and borough councils to boards of guardians and sanitary authorities, over whom they have no control or power of supervision, and as to whose fitness for the duty of expending national moneys there is widespread doubt. The purposes to which these moneys are applied embrace the maintenance of the police, main roads, poor law union officers, pauper lunatics, sanitary officers, vaccination, registration, technical instruction and intermediate education.

The extent to which the rates are, or ought to be, relieved by the cession of the allocated taxes is shown by the following figures[1] for 1891–92:

	Amount.	Rate in the £ on poor rate valuation.
	£	d.
London	1,215,520	8.8
County boroughs	1,384,111	10.5
Administrative counties	3,829,448	10.1
Total, England and Wales	6,429,079	9.9

With the exception of poor law union officers and pauper lunatics, these purposes are such as may fairly be regarded as matters of national concern, and, if the moneys are judiciously and economically expended by the local authorities, no objection would remain to the transfer of the burden to the national exchequer. But in this question of judicious and economical expenditure lies the kernel of the matter. Economists have in general been strongly averse to the plan of entrusting local authorities with the expenditure of moneys

[1] Mr. Fowler's report, 1893, p. xlix.

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raised by national taxation. Mr. Senior, in his evidence before the Burdens on Land Committee in 1846, expressed the opinion that the transfer of the cost of poor relief to the consolidated fund would be ruinous, especially to the laboring class; that it would produce laxity of administration, and destroy industry and frugality. He thought that the transfer of even one half of the cost would discourage economy and be a temptation to create charges, offices and patronage.[1] Mr. Fawcett, writing after the event, was not less emphatic in his opposition:

> No device [he says] that can be imagined would more effectually weaken all the guarantees for economy. Experience more and more confirms the opinion that the great bulk of the people think that money can be taken out of the consolidated fund just in the same way as water is drawn from a perennial fountain, and as if the supply were rained down from heaven.[2]

This statement is undoubtedly supported, and the fears of Mr. Senior have been largely confirmed, by the manner in which the grants which existed down to 1888 were made to subserve purely local and private ends. It has also been repeatedly demonstrated in Parliament and elsewhere that no corresponding or adequate reduction of rates has ever followed the grant of national moneys in relief of local taxation.

One more objection appears to apply to the grants for union officers and pauper lunatics. These expenses have, in rural districts, for three centuries been an hereditary burden on the land, and so far as the grants reduce that burden they are a gift from the nation to the landowners. Mr. Fowler, the President of the Local Government Board, refers to this point in his recent report on local taxation, as follows:

> There is another matter to which I must draw attention in connection with this table. It shows clearly that prior to the passing of the Local Government Act, the hereditary poor rates had already fallen to a very remarkable extent since 1868. This fall was due

[1] Report, Burdens on Land, p. 471.
[2] Political Economy, 6th ed., p. 604.

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partly to the decrease of pauperism, partly to improved poor law administration, and partly to the assistance given to the rates by the government grant for pauper lunatics, instituted in 1875, which had grown in 1889 to 495,641*l.* for the whole of England and Wales. By the Local Government Act of 1888, a new grant, amounting to no less than 967,793*l.* a year, in respect of the salaries of certain union officers and the cost of drugs and medical appliances, was made payable to the boards of guardians outside London out of the imperial revenue transferred by that act to county and borough councils. The relief afforded by this grant was therefore given, not to any of the new rates that were pressing with such constantly increasing severity on householders, but to a rate which for generations had constituted an hereditary burden on the land, the rate in the £ of which was steadily falling, and which apparently stood in less urgent need of extraneous assistance than any of the new rates.

I may add that this rate had already been relieved by no less than four treasury subventions, without including the grant for awards to public vaccinators, *viz.*, the grants (1) for teachers in poor law schools; (2) poor law medical officers; (3) pauper lunatics; and (4) registrars of births and deaths. It should also be borne in mind that the new grant was in no sense an efficiency grant, its amount being determined solely by the amount of the salaries, remuneration, and superannuation allowances of union officers paid by each board of guardians during a year antecedent to the passing of the act under which it was made payable. Its effect has simply been to transfer a part of the hereditary burden on real property to the imperial revenue.[1]

There is something to be said for the relief of most of the other burdens enumerated above from the national revenues. There is an easily comprehended reluctance on the part of the local authorities and their constituents to tax themselves for new purposes, and for purposes which confer no exclusive local benefit. So long, therefore, as the expenditure is optional many localities will elect to forego reforms, improvements and new departures, rather than incur the cost. Even when made obligatory by Parliamentary enactment, it still remains possible to dwarf them to the smallest permissible limits, or to starve the administration. By coupling the grants for police with the

[1] Report on Local Taxation, 1893, pp. xxxi and xlvii.

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attainment of a fair standard of efficiency, much has been done in the past to increase the effectiveness and raise the character of the local forces. The grants for vaccination and registration have in like manner secured the performance of certain functions which would otherwise have been wholly neglected or very imperfectly effected in a very large number of localities. The grant for main roads is fairly justified by the results secured, but the cost is heavy. The expenditure on sanitary officers is at present largely without result, owing to the fact that many of the worst offenders against the sanitary laws are influential members of the local governing bodies. The grants for technical instruction and intermediate education (the latter in Wales alone) have only existed since 1890, but they are rapidly building up a great and excellent work, which, although much needed, was likely to have remained undone without the stimulus and aid thus afforded. In both directions a vast amount of voluntary effort and public spirit has been evoked, which only needs wise direction to ensure excellent results before long.

It now remains to refer to the form recently given to these grants. When, in 1888, the former subventions were mostly withdrawn and the license duties and probate duty substituted, the change was put forward as a great reform. The grounds for this claim are, however, highly disputable. The chief ground of objection to the older form was its encouragement of lax and wasteful expenditure, and this holds good as to the present form in an equal degree. The practical result is the same whether the subsidy is drawn from the national treasury or from one or more of the streams which supply that reservoir. The only real change of importance lies in the fact that whereas the grants were formerly proportioned to the amount of certain classes of expenditure, they are now primarily proportioned to the yield of particular sources of revenue. If this is a gain, it is largely neutralized by the subsequent transfer of part of the proceeds to the lesser local authorities upon the old basis of expenditure, and without guarantees for efficiency or economy. But the gain is otherwise discounted by the restraints imposed upon the operations of the chancellor

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of the exchequer in his management of the national finances. The probate duty grant has been made to bear the character of a contribution from personal property to the relief of local taxation. If it had really been correctly so described, it would have been a vicious innovation; but it is not. No change was made in the rate of the probate duty, and, as no reduction was either asked for or expected, the relief of local taxation has not been procured at the expense of the payers of the probate duty. The grant was, in fact, made at the expense of the general body of national taxpayers, precisely as in all the other cases.

CHAPTER VI. *Problems and Controversies.*

It is not necessary in an essay of this description to discuss all the problems and matters of a controversial character which are incidentally alluded to in a general survey of the subject. Some of them are of little or no general interest, and others have only a temporary importance. But a few of them are of almost universal interest and deserve more than a passing notice. Few, if any, who are acquainted with the subject will be disposed to disagree with Mr. Goschen's opinion that "the question of the incidence of rates as between owners and occupiers" is "the most important point in the whole controversy respecting local taxation."[1] Although this opinion was expressed more than twenty years ago, it remains at least equally true at the present time.

So long as local taxation consisted of poor rates proper, highway rates, county rates and church rates, the expenditure of which was not directly advantageous to particular individuals and classes, the dual basis on which the English system rested, and in the main still rests, was not unfair. This basis may be roughly described as consisting of (1) taxation of agricultural land, falling mainly as an hereditary burden on the property; and (2) taxation of householders, corresponding to an income tax on the occupiers. But with the development

[1] Reports and Speeches on Local Taxation, Preface, v.

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of urban taxation for improvements and sanitation during the last half-century, a new element has entered into the calculation. The expenditure of the local authorities in lighting and paving the streets, sewerage and sewage disposal, and analogous matters, whilst adding to the comfort and convenience of the occupiers of the adjacent houses, at the same time directly benefits the property-owners by raising the letting and selling values of the land and houses. The occupiers are first required to pay rates for the performance of these duties and then to pay a second time in the shape of increased rent. This injustice affects the occupiers and owners of the whole of a town in a relatively equal degree, and has given rise to a demand for the division of the rates between these classes.[1] A similar injustice to the occupier arises in the case of public expenditure on street improvements and such works as the London Thames embankments; on the purchase of the older Thames bridges and the erection of new ones; and on the purchase and maintenance of public parks and open spaces. But here the benefit to the owners of adjacent properties is much greater and more direct than that derived by the owners of properties further removed, and the proposals for remedying the injustice include the special taxation of the former in consideration of the "betterment" of their estates. So far, nothing has been done to relieve the occupiers of any portion of the burden of the rates, the resistance of the landlord class having been greatly assisted by the uncertain and contradictory pronouncements of the economists and financiers who have given evidence upon the theories and principles of the incidence of urban rates.[2]

Closely interwoven with the controversy which has arisen out of the demand for a division of the rates between owners and occupiers, another contest is in progress relative to proposals for the taxation of ground rents or ground values. It

[1] See *ante*, chap. iv, p. 103.

[2] This refers to English economists. Professor Seligman's views, as expressed in his masterly treatises on taxation, are almost entirely in accord with my own. See chap. iv, p. 105.

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is urged that whilst the good government of towns and the manifold developments of municipal activity have enormously increased the value of urban land wholly or mainly at the expense of the occupiers, the owners are entirely escaping local taxation. Various suggestions have been made for the direct taxation of ground values by annual "rates," and for taxing the "unearned increment" by a municipal death duty. If, however, the proposal for an equal division of rates between occupiers and owners were adopted, the taxation of ground values for general municipal and local purposes could be effected by giving the house owner power to deduct an adequate proportion from the ground rent. Unless this were done, the burden would be very likely to revert to the occupier in the form of increased rent.

A problem of scarcely inferior importance, and one closely connected with that of the incidence of rates, is that of the fitness of personal property for assessment to local taxes, and of the best means of bringing it under contribution. The first of these two points has been more or less in dispute during the whole of the three centuries since the first imposition of the poor rate, and, notwithstanding the striking demonstration afforded by the experience of rating stock-in-trade, is still periodically revived. This is partly the result of that ignorance of the laws of incidence to which allusion has been made above. So long as it was believed that the rates paid by the occupiers of houses were ultimately a charge on the owners, the apparent total immunity of personalty from local taxation excited the envy of the owners of house property, and placed them in alliance with the agricultural interest in the effort to devise means whereby personalty might be made to bear a share of the burden. As, however, the conviction gains ground that the burden of house rates falls finally on the occupiers, it is seen that the income obtained from every kind of income-yielding personalty is, indeed, very substantially taxed under the present system. And not merely the income from personalty, but that also which is the reward of industry and skill, is laid under contribution for the supply of local needs. There

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is, indeed, no other means of distributing common *local* burdens according to the ability of the inhabitants to bear them which is so effective, and, on the whole, so just, as that of rating the occupiers of houses on the English plan. The method of adding to the national income tax so much in the pound in each locality as is required for local purposes (which is in operation in Germany and Switzerland, and has been recommended for adoption in England by certain recent writers[1]), is rendered extremely inadvisable and would be much less just, owing to the very large extent to which the British income tax is de-localized. This tax is almost wholly assessed and levied in London and the chief cities in respect of (1) interest on the national debt and foreign and colonial loans; (2) the profits and interest of home and foreign railways, canals, banks, insurance companies and many other widely ramifying concerns; and (3) the salaries and pensions of the officers of the army, navy and civil service. The provisions under which this is effected are the most perfect and most scientific portion of the income tax machinery, and the result of a long process of evolution. This process is only beginning in Germany and Switzerland, and its completion in those countries will inevitably de-localize their income taxes also, and render them unfit instruments for raising local revenues.[2]

There is, however, one drawback to the system of rating householders which has hitherto escaped the notice of writers on this subject. Owing to causes which need not here detain us, the poorer inhabitants of London and the larger provincial towns have, in modern times, been compelled to pay a greatly enlarged proportion of their income in house rent, until it has reached an average of from one fourth to one sixth. This is a far higher proportion than prevails in the middle and upper classes of society, and, as the distribution of the burden of the

[1] This plan is strongly urged by Cox (Land Nationalization, p. 109), but he is hopelessly wrong as to the incidence of rates and taxes on householders, and obviously unacquainted with the structure of the British income tax.

[2] Prof. Bastable (*Economic Journal*, vol. iii, pp. 259–260) gives other reasons which also enforce this view, and shows that land and buildings are the fittest, if not the only fit, subjects of local taxation.

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rates is governed mainly by the rent, it follows that the latter is, so far, a defective criterion of ability to bear taxation. This defect is, however, one which can be remedied without serious difficulty by the allowance of a somewhat more liberal deduction from the gross rent for the purpose of finding the "ratable value" of cottages and other dwellings of the poorer classes.

In the British Islands the local taxes on householders have throughout been coupled with taxes on agricultural land, which have descended in unbroken continuity for three centuries as an hereditary charge on this form of property. This dual basis has been recently supplemented by the transfer of the proceeds of certain national taxes, the broad effect of which has been to reduce the hereditary charge on rural land at the expense of the general income of the whole community.[1] So far as the change has lightened urban rates, it has simply been a transfer of the burden from one pocket to the other, with a certain amount of leakage and loss in the process.

The existing system needs to be modified by (1) the taxation of owners for urban improvements, and for local government in town and county alike; (2) the more equal distribution of certain burdens upon principles analogous to those embodied in the Metropolitan Common Poor Fund; and (3) the release of the beer, spirit and probate duties from their present partial allocation to local purposes, and the substitution of a tax capable of local assessment and collection. By these modifications the basis of the system would be broadened and the incidence of the local taxes rendered substantially equitable and fair. But it is also essential that the system shall be simplified and unified in the matters of valuation, assessment and collection.

[1] See *ante*, chap. v.

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PART II.

SCOTLAND.

The history of local finance in Scotland is exceedingly obscure. The poor law commissioners, in their report of 1843, say: "With respect to Scotland, scarcely anything appears to be known of its public revenues and expenditure." Writing in 1875, Mr. McNeel-Caird says: "The amount of local taxation in Scotland is a problem which has hitherto been unsolved. There are no published data for ascertaining it."[1] Mr. Goschen had computed the local rates in Scotland for the year 1868 at £1,357,419, and Mr. McNeel-Caird totaled up those for 1873–74 to £1,985,912. As late as 1880, Messrs. Goudy and Smith were unable to obtain any reliable figures of several classes of local taxation, and they describe some of the official returns which had been issued as "extremely defective" or "so defective as to be worthless." The table prepared by them in 1880 from the returns for 1877–78 and 1878–79 puts the parochial rates at £1,087,521, paid in equal shares by owners and occupiers; burgh rates, £733,550, of which the owners paid £121,775; and county rates, £148,114, almost wholly borne by the owners. They estimated the tolls and road assessments at £294,000, and the receipts from burghal property at £200,000.[2] These figures nearly agree with those of McNeel-Caird for 1873–74, and would appear to have been too low. Since 1880 the local taxation returns for Scotland have been regularly published under official authority, and the following figures are extracted from the latest issue:[3]

[1] Cobden Club Essays on Local Taxation, 1875, p. 151.

[2] Local Government in Scotland, pp. 97–99.

[3] The summary of the Scottish local taxation statistics for 1890–91 has not yet been issued (March 27, 1894). The delay is extraordinary and apparently unreasonable. Tables XII, XIII and XV of the appendix (*infra*, p. 297) relate to a period antecedent to the reform of county government in 1890, but they are the latest available.

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Year.	Total Receipts.	Of which was Derived				Total Expenditure.
		From Rates.	From Tolls, Dues, Fees, Fines and Rents.	From Grants in Aid.	From other Sources (excluding Loans).	
	£	£	£	£	£	£
1880–81	4,937,825	2,956,189	1,089,405	545,707	346,524	4,960,519
1885–86	5,524,390	3,375,637	1,128,653	679,577	340,523	6,000,571
1889–90	6,093,255	3,565,129	1,275,488	797,863	454,775	6,139,930

Prior to 1890, the management of the county finances of Scotland was mainly in the hands of non-elective bodies called commissioners of supply, who acted by virtue of property qualifications and were chiefly representative of the landed proprietors. Although originally appointed in the seventeenth century for the raising of national revenues, as their name indicates, they gradually became the chief administrators of the non-judicial county business. Amongst the duties transferred to or imposed on them were the levying of "rogue money," the control of the county police, the erection and care of court-houses, the preparation of the valuation roll (except in burghs), and a preponderating share of the management of prisons, roads and lunatic asylums.[1] Rogue money[2] was first imposed in 1771

for defraying the charges of apprehending criminals and of subsisting them in prison until prosecution, and of prosecuting such criminals for their several offences by due course of law.[3]

Down to 1832 the tax was levied by an ancient court of freeholders, but was then transferred to the commissioners of supply. It was abolished in 1868, and a general county assessment substituted. The tax has always been levied upon the owners, in both its old and its new forms.[4] For the pur-

[1] Goudy and Smith, Local Government in Scotland, 1880, pp. 15 and 21.

[2] *Ibid.*, pp. 21 and 67.

[3] 11 Geo. I, chap. 26, quoted by McNeel-Caird, p. 117.

[4] The contrary appears to have been stated by Mr. Cochran in his evidence before Mr. Goschen's committee (see Q. 357), but this statement referred primarily

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poses of road management a system grew up towards the middle of the present century, chiefly under local acts, of joining elected representatives of the occupiers with the commissioners of supply, in bodies known as road trustees; and for the management of prisons and lunatic asylums, a limited representation of the burgh magistrates was associated with the commissioners of supply.

Very considerable changes were made in the Scottish system of local finance by the Local Government Act of 1889, which took effect in May, 1890. The chief of these changes were the creation of county councils similar to those provided for England by the act of 1888, and the transfer to them of the fiscal powers of the commissioners of supply, of the county road trustees, of the parochial boards under the Public Health Acts and of the authorities of burghs having less than 7000 inhabitants in respect of police, contagious diseases and destructive insects. An instalment of a most necessary work of unification and simplification was effected at the same time by the repeal of a large number of local road acts and the general enforcement of the Roads and Bridges (Scotland) Act of 1878. Provision is also made in the act of 1889 for the consolidation of county rates. The main purposes not mentioned above to which the revenues of the county councils were made applicable include county police, valuation, registration of voters, court-houses and county buildings, militia depots and storehouses, lunacy (expenses of asylum buildings chiefly), weights and measures and adulteration acts.[1]

As in England, the growth of urban local taxation has been very rapid in recent years. Mr. McNeel-Caird put down the total revenues of the burghs in 1873–74 at £653,164; the total for 1890–91, inclusive of those raised under the Roads

to the burgh of Aberdeen. In the extra-municipal portion of the county of Aberdeen, the tax appears from his evidence to have fallen on the owners. Q. 270, 275 and 289.

[1] The local taxation returns relating to counties for 1890–91 have not yet appeared. As that was the first year of the existence of the county councils, the delay is especially unfortunate, the earlier statistics of county finance being of no present value.

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and Bridges Act of 1878, was £2,234,582. It must, moreover, be borne in mind that this total does not include poor rates and school rates, which are not under municipal management and are not separately tabulated for town and country. The main heads of burghal revenue for 1890 were as follows :

From property, investments and common good	£231,245
Police rates	718,603
Public health rates	131,052
Road rates	157,608
Water rates	368,375
Other rates	241,631
Grants-in-aid	199,071
Other receipts	276,497

Loans to the amount of £1,154,089 were also raised during the year.

The chief items of burghal expenditure for the same year were :

Roads under act of 1878	£222,121
Police	233,818
Lighting, cleaning and paving	368,028
Public works	101,007
Drainage	72,204
Hospitals	66,309
Public parks	65,553
Water supply	211,027
Nuisance removal	26,218
Salaries	84,073
Interest on loans	409,650

Loans to the amount of £998,328 were repaid during the year. The total indebtedness of the burghal authorities at the close of the year 1890–91 was £12,077,510; but as a set-off they possessed investments of sinking funds amounting to £1,051,148. The gross rental of the burghs, as shown in the valuation roll, was £12,518,192.

In urban districts the rates levied for sanitary and general municipal purposes are charged only on one-fourth of the annual value in the cases of agricultural land, railways, canals,

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mines and quarries.[1] There are various statutory limits of rating for these purposes which somewhat restrict the powers of urban authorities to undertake costly improvements.[2]

The administration of the Poor Law Acts throughout Scotland, and of the Registration of Births, *etc.*, Acts and Burial Grounds Act in rural parishes, is entrusted to parochial boards, who levy the rates required for these purposes. Prior to 1890 they also administered the Public Health Acts in rural districts and levied the necessary rate; but this department has now been transferred to the county councils.[3] Elementary education is in the charge of parish and burgh school boards created in 1872, but the school rate is raised by the parochial boards. For poor-law purposes the limits of the old civil parishes, 885 in number, are still adhered to; but there have been subdivisions for church and educational purposes. There is nothing in Scotland corresponding to the English poor-law unions and boards of guardians, the administration of the poor laws being wholly parochial.

The poor-relief system of Scotland appears to have remained upon a voluntary basis down to 1845, and, till then, to have resembled that abandoned in England in 1601. It dated from the latter part of the sixteenth century, and was probably called into existence by the dissolution of the monasteries, as was the case in England.[4] The system of general parish assessments, introduced by the act of 1845, was followed by a rapid increase of expenditure, as the following figures will show:[5]

Year.	No. of Assessed Parishes.	Cost of Relief and Management.	Rate per Head of Population.
		£	s. d.
1845–46	448	292,518	2. 3
1846–47	558	433,915	3. 1½
1847–48	600	533,363	3. 9½
1848–49	625	562,268	3.11½

[1] Goudy and Smith, pp. 49 and 71.

[2] *Ibid.*

[3] In burghs, the acts relating to registration of births, *etc.*, burial grounds and public health are administered by town councils.

[4] Goudy and Smith, pp. 5 and 45; Local Government and Taxation in Scotland, by W. Macdonald, Cobden Club Essays, 1882, pp. 407–409.

[5] Report of Board of Supervision, 1891–92.

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Year.	No. of Assessed Parishes.	Cost of Relief and Management.	Rate per Head of Population.
		£	s. d.
1851–52	671	514,288	3. 6½
1861–62	759	680,700	4. 4½
1868–69	793	821,184	4.11½
1875–76	817	797,800	4. 5¾
1881–82	823	844,782	4. 5¾
1891–92	839	871,306	4. 3¼

But this system is not universally in operation, there being still forty-six parishes in which the old voluntary system, modified and reformed, is permitted to continue by the board of supervision. There are thirteen other parishes in which poor relief assessments are levied upon an old plan which was in partial use before 1845, known as assessment by established usage.

An interesting experiment in taxation was worked out in connection with the Scottish Poor Law of 1845. The poor rate was laid in equal shares on the owners and occupiers of the ratable property in each parish; but the parochial boards were authorized to levy the occupiers' moiety in either of three ways, one of which was by an assessment of "means and substance." No precise definitions of this term were laid down, and it fell out that an English judge was assessed upon his full salary in aid of the poor rate of a parish in Scotland in which he happened to have a residence. This was simply a glaring instance of the general inconvenience and injustice of the method, which was found to be rapidly depopulating some of the parishes to which it was at first applied, and was before long wholly abandoned.[1]

Another experiment, having a similar end in view, has met with greater acceptance. This consisted of the classification of occupiers for their share of the poor rate according to the nature of the occupancy. Three categories were usually adopted: (1) private residences, (2) shops and business

[1] McNeel-Caird, Cobden Club Essays, 1875, p. 156. See, also, evidence given before the Local Taxation Committee of 1870 by Mr. Cochran, Q. 322; Sir J. Lambert, Q. 2339 and 2352; and Sir J. Caird, Q. 4357–4359. Also Burdens on Land Report, 1846, pp. 598 and 603.

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premises, and (3) farms. The rent or annual value was taken as a basis in each case; but the rates in the pound varied in the proportions of three, two and one, or four, two and one, respectively.[1] This plan is still in operation in 174 parishes. It is, of course, inapplicable to parishes consisting chiefly of holdings of one class; but for parishes of mixed character there appears to be much to be said for it, both from the point of view of abstract justice and from that of conformity with the laws of ultimate incidence. "Classification" does not apply to the owners' half-share.

The total revenue of the parochial boards in 1890–91 (exclusive of loans) was £1,498,368; and from loans, £9,520. The chief items were:

Rates	£1,336,226
Grants-in-aid	112,930
Other receipts	49,212

The expenditure may be summarized thus:

Under the Poor Law Acts	£901,042
Under Registration Acts	14,772
Under Burial Grounds Act	20,168
Under Valuation Act	1,120
Paid over to school boards	588,712
Repayment of loans	38,515

The loans outstanding at the end of the year amounted to £364,175. The gross rental of assessed parishes was £23,630,277; of unassessed parishes, £294,605; and of the whole of Scotland, £23,924,882.

The history of highway and main-road legislation in Scotland closely resembles that of England, the same expedients of repair by the inhabitants, statute labor, turnpike tolls, rates and government subventions having been in turn resorted to in each case.[2] Turnpike tolls were abolished in 1883, and the cost is now wholly borne by the rates, except so far as these are relieved by the allocated taxes, as in England.

[1] Goudy and Smith, p. 46; Macdonald, Cobden Club Essays, 1882, pp. 412–413; Cochran's evidence, 1870, Q. 325, *et seq.*

[2] Goudy and Smith, p. 75 *et seq.*

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An old and peculiar feature of Scottish local finance is the taxation of real property for ecclesiastical purposes. The assessments are made and the moneys expended by the "heritors of parishes."[1] Their rates for 1890–91 produced £39,494, of which £11,510 were spent on churches and £17,080 on manses (parsonages). The rates fall wholly on the owners.

The sum paid to the Scottish local taxation account in the year 1891–92, from the produce of the allocated taxes, was £795,712, as shown in Part I, Chapter V. In 1890–91 the amount was £730,988, and the disposition of this sum is set forth in detail in Table XIV of the Appendix.[2] In addition to the relief of local taxation thus afforded, further assistance is given by way of grants out of the consolidated fund and charges borne by Parliamentary votes. It is difficult to determine which of these grants and charges are wholly or partly local in character, no official list or statement being obtainable. Some figures are, however, appended in Table XVI, in which the lines adopted in the English return (see Table IX, Part I) have been followed as far as possible.

Two matters in respect of which the Scottish system differs from that of England are the existence of a well-made valuation roll for all local purposes, and the very large extent to which the rates are charged directly upon the owners. Prior to 1854, the county assessments were based upon valuations two hundred years old,[3] but in that year an act was passed requiring the county and burgh authorities, respectively, to make up a valuation roll annually, and to base their future assessments upon it. A uniform basis of assessment is thus provided for the whole country, which, in practice, has given very general satisfaction.[4] In a large number of counties and burghs the

[1] Goudy and Smith, pp. 5 and 61.

[2] Similar official returns for England and Ireland would be both interesting and useful, but none have yet been issued.

[3] McNeel-Caird, 1875, p. 119.

[4] Goudy and Smith, p. 89. The values entered in these rolls are similar to those known in England as "gross estimated rental." For poor rate and school rate purposes, deductions are made which furnish a net valuation, similar to the English "ratable value." These deductions vary according to local usage.

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services of the surveyors of taxes have been utilized in the preparation of the rolls, under an arrangement with the board of inland revenue; and the valuations made by them are accepted by the crown for the assessment of imperial taxes, as in London under the Metropolis Valuation Act. The general rules for estimating the value of property correspond closely to those theoretically in operation in England; but an exception exists in a provision that lands let on lease for periods not exceeding twenty-one years, at a yearly rent and without any other consideration, are to be assessed on the rent, regardless of any improvements effected during the currency of the lease. The act of 1854 further provides that in the case of leases for more than twenty-one years, the lessee is deemed to be the owner, but is empowered to deduct from the rent or ground rent so much of the rates as corresponds to the proportion which the rent or ground rent bears to the total valuation.[1] The duty of preparing the valuation roll in royal and Parliamentary burghs is cast on the magistrates of such burghs; elsewhere, on the county councils. The cost is borne in equal proportions by occupiers and owners.

The division of certain of the rates between occupiers and owners extends, in some cases, to the making of separate assessments on the respective persons of each class, and the separate collection of the respective quotas from those persons or their agents.[2] In other cases the rates are first paid by the occupiers, and the owners' proportion is deducted from the rent.[3] The apportionment of rates between these classes and the amounts borne by each are set out in detail in Table XV of the Appendix.[4]

Under the act of 1889, county rates for new purposes and increases in the old ones beyond the average of the previous

[1] McNeel-Caird, p. 120.

[2] See evidence given before the Local Taxation Committee, 1870, Q. 320, 4132–3 and 4335–6.

[3] Goudy and Smith, pp. 22 and 30.

[4] Sir J. Caird stated in evidence before Mr. Goschen's committee of 1870 that prior to 1845 the Scottish rates were borne wholly by the owners. The occupiers were, however, liable to provide labor for the repair of the roads, and were also expected to relieve the poor who subsisted by begging. Q. 4131 and 4134.

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ten years fall equally on the owners and occupiers. The older plan, of charging the owner only, conformed to the facts of the ultimate incidence so far as the rates were levied in respect of lands,[1] mines and quarries; but it has evidently been considered desirable to work towards an equal division all round. The case for applying the latter method to burghal rates is, as has been shown in Part I, Chapters IV and VI, extremely strong and urgent.

It will be seen that, notwithstanding the inadequate contribution from property in towns, the Scottish system already concedes much of the relief demanded, but not yet secured, by the occupiers in England. It will presently be seen that Ireland is also considerably ahead of England in respect of both uniformity of valuation and the liability of owners for a share of the local burdens.

In burghs there is a twofold collection of rates by the burgh and parish authorities, as in England; and in rural districts by the corresponding levies of the county and parish authorities. But to the latter must be added the separate levy of church rates, which are not now existent in burghs.

PART III.

IRELAND.

A review of Irish local finance is greatly facilitated by the existence of an admirable report on local government and taxation in Ireland, drawn up by Mr. W. P. O'Brien, local government inspector, in 1878; and by the reports and returns of Dr. W. Neilson Hancock, of the Irish local government board. The latter also contributed an essay on these subjects to the series issued by the Cobden Club in 1875, in which much of the matter contained in his official reports was collected and lucidly presented.

Irish local finance falls naturally into four main divisions, relating respectively to counties, towns, unions, and harbors and other miscellaneous matters. The county rate in known

[1] McNeel-Caird, Cobden Club Essays, 1875, p. 153.

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as the "grand jury cess," and is the oldest form of Irish direct local taxation. It dates back to 1635, in which year an act was passed by the Irish parliament authorizing the justices of assize and of the peace, with the assent of the grand jury, to tax the inhabitants for the repair of bridges.[1] In the latter half of the last century, this tax was made applicable to the repair of roads, and before the end of that century Ireland had become possessed of a network of unusually good highways. Turnpike tolls had come into use for the maintenance of main roads at an earlier date, but during the first half of the present century these were gradually superseded by rates, and in 1857 were finally abolished. Ireland thus took the lead in the British Islands in this important reform. The total amount of the grand jury cess was, in 1856, £1,018,515; in 1866, £1,055,482; in 1876, £1,130,723; and in 1892, £1,261,928. There would have been, however, a larger increase in the later years, but for the grants of aid from imperial funds in respect of lunatic asylums, prisons and roads; and the decrease of the rural population must also be taken into account. The withdrawal of a number of urban areas from the fiscal control of the grand juries (see next page) has also assisted in keeping down the total of the cess. Of the gross presentments of grand jury cess for 1892, £746,650, or rather more than one half, was for roads and bridges; the only other single department of county business which cost over £100,000 being lunatic asylums. The charge for police (exclusive of the Dublin Metropolitan Police) which fell upon the Irish rates in 1892 was only £38,284. The smallness of this sum is due to the fact that the Royal Irish Constabulary is a semi-military force, the very heavy normal cost of which is charged to the imperial revenues.[2] It is only the cost of extra duties, arising out of local disturbances and special circumstances, which is charged to the county authorities and raised locally.

The grand jury is a non-elective body, chiefly drawn from the landlord class; and although the expenditure of the cess is first

[1] Hancock, Cobden Club Essays, 1875, p. 190; Local Taxation (Ireland) Returns, 1871, p. 15; and Mr. O'Brien's Report, 1878, p. 29.

[2] See Table XVIII, p. 302.

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submitted to bodies called "presentment sessions," composed of justices and cesspayers, there are such restrictions as quite to prevent all effective popular control. The authority of the grand juries formerly extended to all the towns, but the cities of Dublin, Cork and Limerick succeeded, in 1849, 1852 and 1853, in obtaining acts by which the non-judicial functions and powers of the grand jury were transferred to the municipal councils in those cities.[1] The grand juries have also ceased to act as the road authorities in all the more populous of the other towns and urban areas, the care and cost of the roads in such places being undertaken by the town authorities.[2] No particulars are published of the loan indebtedness of the county and union authorities in Ireland, and therefore no total for the whole country can be given. A peculiar and interesting feature of Irish local finance consists of the arrangements under which the construction of railways and tramways may be aided by baronial guarantee. The method is by pledging the rates of the barony (a sub-division of the county), with the consent of the baronial presentment sessions and certain higher powers.

The older municipal bodies of the Irish cities and towns, like those of England, appear in the last century, or earlier, to have become close corporations, with exclusive privileges of trading, and to have lost whatever powers of imposing direct taxation they may have formerly possessed.[3] This has been remedied by acts passed in 1828, 1840 and 1854, and by special acts applicable to some of the larger towns.[4] Under these, representative bodies have been created, with functions analogous to those of urban authorities in England, and with similar taxing and borrowing powers;[5] subject, however, to certain limitations in these latter respects. The receipts of the town authorities

[1] Mr. O'Brien's Report, pp. 37 and 41.

[2] Local Taxation Returns (Ireland), 1892, p. 42. The figures for 1892 given in the text of this Part are chiefly taken from these returns.

[3] Hancock on Local Taxation, 1875, p. 205.

[4] Mr. O'Brien's report, p. 40.

[5] *Ibid*, pp. 42 and 46. There are eleven town councils, and sixty other urban sanitary authorities. Of these, thirty are road authorities. There are also forty-seven towns which are not urban sanitary districts. Except in the eleven corporate towns, the governing bodies are called town commissioners.

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in 1892, exclusive of loans, amounted to £917,149, of which £621,143 was raised by rates. The expenditure for the same year included £139,977 in respect of water supply, £126,680 on paving and repair of streets, £119,246 on sewers, drains and other sanitary objects, £97,096 on street cleansing and watering, and £90,950 on public lighting. The outstanding debt of the town authorities in 1892 was £4,478,687. In 1871, the amount was £1,602,928.

The city of Dublin occupies a peculiar position in respect of its police. These are a distinct body from the constabulary, but are under the direct control of the crown. The Dublin city council is, however, required to levy a police rate of 8*d.* in the pound, and to hand the proceeds over to the metropolitan police commissioner. The latter official also receives the proceeds of special and peculiar local taxes on carriages and on pawnbrokers' and publicans' licenses, in addition to fees, fines and penalties from the city police courts. The total sum received from local sources in 1892–93 was £49,395, but the bulk of the charge rests upon the imperial exchequer.[1] Belfast and Londonderry formerly possessed similar local police forces, but these have been disbanded.

No statutory provision for the relief of the poor was made until 1771; and the law passed in that year, and extended in 1806 and 1818, was merely permissive and practically inoperative.[2] In 1838, however, a comprehensive and obligatory poor law was passed, under which Ireland was mapped out into unions and electoral districts, and a system of relief and administration resembling that of England was instituted. There was, indeed, the important distinction that the Irish system at first permitted of no out-relief; but this feature was introduced in 1847, and has since received an extended application. The cost of the system was estimated beforehand at £295,000, but this sum appears to have been exceeded from the outset. The outbreak of the Irish famine rapidly swelled the outlay, which for the year ending September, 1849,

[1] See Table XVIII.

[2] Hancock on Local Taxation, 1875, p. 174.

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amounted to no less than £2,177,649. In the following year it fell to £1,430,108, and continued to decrease until 1859, when the total was only £413,712. From this point the cost has slowly risen, and for 1892 it amounted to £872,001. The boards of guardians have been entrusted with many new duties from time to time. These have swollen the expenditure for 1892 to £1,406,261, of which sum £960,205 was raised by poor rates, £209,816 by Parliamentary grants, and £128,515 by loans. Amongst the items of expenditure is one of £23,249 under the National School Teachers Act, which is the only entry in the Irish local taxation returns in respect of education.[1] The poor law guardians consist partly of elected and partly of *ex officio* members, the latter being magistrates. The cost of the maintenance of paupers was, by the act of 1838, charged to the ratepayers of the electoral divisions to which they belonged; but considerable modifications of this principle were legalized by an act of 1876.

The harbor and pier authorities are forty-six in number, and their receipts amounted in 1892 to the considerable sum of £477,653. The outstanding debt of these bodies in 1892, so far as it is tabulated, was £2,497,654, but only twenty-six of the number are entered in the returns.[2] There appear to be at least five others which are in debt to the imperial treasury, inasmuch as repayments are entered in the tables of expenditure. Some of the harbors, executed out of the imperial taxes for the purposes of steamboat traffic and of carrying the mails, are still under the imperial authorities, and although these are included in the tables of receipts and expenditure, they are excluded from those relating to debt. The others are controlled by special bodies of commissioners, and in no case belong to the town or county authorities.

Considerable public works have been undertaken during the great famine and in subsequent periods of distress, largely, if not chiefly, with a view to finding employment and affording

[1] The bulk of the cost of primary education in Ireland is borne by the imperial taxes. The trifling sum contributed from the rates is now partly, if not wholly, repaid. *Cf. infra* p. 295, and Table XVIII.

[2] The amount in 1871 was £1,062,633.

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relief. The principal of these are works of arterial drainage, inland navigation and light railways. A large share of the cost has been borne by the imperial treasury, and the balance has been lent to local bodies on the security of the rates. The funds required for maintenance are raised by rates on the benefited properties or districts, as prescribed by acts passed in 1842, 1863, 1866 and more recent years; by treasury grants; and, in the case of inland navigation, by tolls and other receipts.

There are a number of dues, duties, fines and fees of various kinds levied in Ireland, which are included in the returns of local taxation, but are not in all cases properly so described. Some of them are of considerable antiquity, and the arrangements under which they are exacted are bound up with private or professional vested interests. Apart from the tolls and dues levied by the harbor authorities, these miscellaneous receipts are not important (see Table XVII) and need not be explained in detail.

Ireland, like Scotland, is in advance of England in the matter of a uniform valuation for rates and taxes. The official valuation, commenced in 1827 by Sir Richard Griffiths and generally known by his name, was completed by his successor, and brought into full operation by the General Tenement Valuation Act of 1852. So far as the valuation relates to lands, it was fixed by a reference to agricultural prices, and can only be altered at intervals of fourteen years and with the consent of the grand juries. No revaluation has, in fact, been made since 1852. Buildings are subject to more frequent revaluation, and the value is ascertained in a manner more nearly corresponding to the English method.[1]

The case of Ireland also resembles that of Scotland, rather than that of England, in the matter of the division of the rates between owners and occupiers. The poor rate is equally divided, and provision was made in the Irish Land Act of 1870 for the extension of the application of the principle to all other

[1] Hancock, Cobden Club Essays, 1875, pp. 217–218; O'Shaughnessy, *ibid.*, 1882, p. 347; Local Taxation Returns, Ireland, 1871, p. 14; and Mr. O'Brien's report, 1878, p. 65.

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rates in new lettings of agricultural and pastoral holdings. Owing, however, to the omission of a prohibition of contracts to the contrary effect, the operation of this provision has been greatly restricted, and the intention of the legislature defeated, by agreements imposing the whole burden of the rates upon the tenants.[1] Town rates are wholly borne by the occupiers, as in England.[2] The actual payment of rates in Ireland (except in respect of holdings under £4 valuation) is by the occupier, who deducts the share for which the owner may be liable from the rent.[3]

The collection of rates in Ireland is effected, in rural districts, under the two main heads of grand jury cess and poor rate; and in the smaller towns there is added to these the town rate. In Belfast, Cork, Limerick and some smaller places the town rate includes the grand jury cess, and in Dublin there is a complete consolidation of all rates in a single collection.[4]

The Irish share of the allocated taxes set out in Part I, Chapter V, in 1891–92, was applied as follows:[5]

(1) £5,000 of the probate duty grant to the Royal Dublin Society annually, for the improvement of the breed of horses and cattle;

(2) Half of the balance of said grant (in 1891–92, £119,615) to guardians of unions in respect of salaries, *etc.*, of officers;

(3) Remainder of said grant (£119,615 in 1891–92) to road authorities in respect of roads and bridges;

(4) £78,000 per annum of the proceeds of the customs and excise duties to the commissioners of education for national schools (including certain repayments to guardians of contributory unions); and

[1] Mr. O'Brien's report, 1878, p. 67; Local Taxation Returns, 1871, p. 17; and other references as in last note, *et seq.*

[2] Their equal division between landlord and tenant was unanimously recommended by a House of Commons committee in 1878, but nothing has been done.

[3] Mr. O'Brien's report, p. 66; O'Shaughnessy, Cobden Club Essays, 1882, p. 347; Sir J. Lambert, Evidence, Local Taxation Committee, 1870, Q. 1719, 1748, *etc.*

[4] Hancock, p. 208; O'Brien, pp. 38 and 41.

[5] Probate Duties (Scotland and Ireland) Act, 1888, and Local Taxation (Customs and Excise) Act, 1890.

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(5) Residue of last-named duties (£37,030 in 1891–92) to the intermediate education board for certain purposes in furtherance of intermediate education.

The Irish local charges borne by the imperial funds have long been largely in excess (proportionately) of the corresponding English and Scottish charges borne in like manner. This arises partly from the different character and management of the police forces in Ireland, and partly from the poverty of the Irish people. It must also be borne in mind that Ireland receives no revenue for local purposes from liquor and establishment licenses (see Part I, Chapter V), and continues to receive grants from imperial funds for some of the purposes which in Great Britain are now charged to the license duties. No complete official statement of the Parliamentary votes and consolidated fund charges in aid of Irish local taxation is issued, but some statistics bearing on the subject will be found in Table XVIII of the Appendix.

The relief of local taxation thus afforded is in addition to that provided by the Irish share of the allocated taxes, amounting to £359,260 for 1891–92, already referred to.[1] Table XVIII may be compared with Table IX for England and Wales, and Table XVI for Scotland.

A relic of mediæval taxation still survives at Galway, in the shape of duties on salable articles passing through the gates of the town. The present tariff is regulated by an act of 1853, and consists of "ingate tolls," extending to about one hundred items, and "outgate tolls," extending to about forty items.[2] Similar tolls are believed to exist in other Irish towns, but no details are obtainable. In the Burdens on Land Report, 1846, reference is made (page 12) to a vestry cess for coffins for the poor, a foundling tax and a tax called "minister's money." These no longer appear in the accounts of Irish local taxation, and are no doubt obsolete.

G. H. BLUNDEN.

NEWCASTLE-ON-TYNE,
ENGLAND.

[1] See *ante*, p. 270.
[2] Hancock, Cobden Club Essays, 1875, p. 215.

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APPENDIX.

PARTS II AND III. — SCOTLAND AND IRELAND.

TABLE XII.

LOANS ON SECURITY OF RATES, DUES OR PROPERTY, 1889–90.

Scotland.

LOCAL AUTHORITIES.	Outstanding at beginning of Year.	Borrowed during Year.	Repaid during Year.	Outstanding at close of Year.	Increase + or Decrease — of Debt.
Parochial boards	£852,094	£30,154	£57,638	£824,610	— £27,484
School boards	3,125,216	162,385	92,876	3,194,725	+ + 69,509
Burgh authorities	11,237,648	829,200	648,971	11,417,877	+ + 180,229
Commissioners of supply	109,899	12,958	21,060	101,797	— 8,102
District fishery boards	141	—	141	—	— 141
Roads and bridges trusts:					
Counties	289,037	7,294	19,433	276,898	— 12,139
Burghs	336,121	69,343	12,199	393,265	+ 57,144
County road trusts	25,043	672	4,039	21,676	— 3,367
Heritors for ecclesiastical purposes	12,185	4,972	3,927	13,230	+ 1,045
Harbor authorities	9,128,715	240,536	232,606	9,136,645	+ 7,930
Total	£25,116,099	£1,357,514	£1,092,890	£25,380,723	+ £264,624

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TABLE XIII.

SHOWING THE AMOUNTS RECEIVED AND EXPENDED BY THE VARIOUS LOCAL AUTHORITIES IN SCOTLAND, DURING THE YEAR 1889–90.

(From Local Taxation Returns.*)

LOCAL AUTHORITIES.	RECEIPTS.						EXPENDITURES.	
	Rates.†	Tolls, Dues, Duties, Fees, Fines and Rents.	Grants in Aid.	All other Sources (excluding Loans).	Total Receipt.	Borrowed during the Year.	Total Expenditure (excluding Repayment of Installments of Loans).	Installments of Loans Repaid during the Year (exclusive of Interest).
Parochial boards	£1,391,666‡	—	£166,995	£67,223	£1,625,884	£30,154	£1,035,932	£57,638
School boards	—	272,225	423,655	70,766	766,646	162,385	1,355,009	92,876
Burgh authorities	1,430,559	255,733	98,585	202,048	1,986,925	829,200	1,901,270	648,971
Commissioners of supply	201,739	4,421	74,105	22,935	303,200	12,958	336,921	21,060
Roads and bridges trusts:								
Counties	262,058	511	23,306	32,526	318,401	7,294	329,935	19,433
Burghs	160,881	29	3,940	12,467	177,317	69,343	239,241	12,199
County road trusts	69,602	19	7,277	1,019	77,917	672	88,947	4,039
Heritors for ecclesiastical purposes	37,884	—	—	4,269	42,153	4,972	43,606	3,927
Harbor authorities	—	742,331	—	40,740	783,071	240,536	797,512	232,606
District fishery boards	10,740	219	—	782	11,741	—	11,557	141
Total receipts	£3,565,129	£1,275,488	£797,863	£454,775	£6,093,255	£1,357,514	£6,139,930	£1,092,890

* See *ante*, p. 280, note 3.

† For apportionment of rates between owners and occupiers, see Table XV.

‡ Including school rate of £562,969.

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TABLE XIV.

SUMMARY OF THE TOTAL PAYMENTS INTO AND OUT OF THE LOCAL TAXATION (SCOTLAND) ACCOUNT, FOR THE FINANCIAL YEAR ENDING 31ST MARCH, 1891.

(From Parliamentary Paper C. 6583, as amended by C. 6757, Year 1892.)

PARTICULARS OF RECEIPTS AND PAYMENTS.	Payments into the Account.	Payments out of the Account.	Unspent from Grant.
I. CUSTOMS AND EXCISE DUTIES.	£ s. d.	£ s. d.	£ s. d.
Receipts.— Commissioners of customs	22,622 5 8	—	—
" inland revenue	120,429 9 6	—	—
Payments.— Technical education	—	26,566 19 10	—
Police superannuation	—	40,000 0 0	—
Relief of school fees	—	40,000 0 0	—
Medical officers and sanitary inspectors	—	14,982 5 11	17 14 1
Relief of local rates	—	21,484 15 4	—
	143,051 15 2	143,034 1 1	—
Amount unspent transferred to corresponding grant for 1891–92	—	—	17 14 1
II. LOCAL TAXATION LICENSES AND PROBATE DUTY.			
Receipts.— Local taxation licenses	322,432 16 10	—	—
Probate duty	265,503 10 4	—	—
Payments.— Highlands and islands grant	—	10,000 0 0	—
Contribution to cost of roads	—	35,000 0 0	—
" pay and clothing of police	—	155,000 0 0	—
" parochial boards (medical relief)	—	19,967 1 10*	32 18 2
" " (pauper lunatics)	—	90,388 18 9*	111 1 3
Relief of school fees	—	252,000 0 0	40,558 6 2
	587,936 7 2	562,356 0 7	—
Amount unspent transferred to corresponding grants for 1891–92	—	—	40,702 5 7
Customs and excise duties, as above	143,051 15 2	143,034 1 1	17 14 1
Local taxation licenses, etc., as above	587,936 7 2	562,356 0 7	40,702 5 7
	730,988 2 4		
Local taxation licenses, balance transferred from grant for 1889–90 (relief of school fees)	15,121 19 0	—	—
Grand total	£746,110 1 4	£705,390 1 8	£40,719 19 8

* Net expenditure after deduction of amounts received from parochial boards.

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TABLE XV.

APPORTIONMENT OF SCOTTISH RATES BETWEEN OWNERS AND OCCUPIERS IN 1889–90.

(From Local Taxation Returns.)

LOCAL AUTHORITIES.	Total Amount of Assessment.*	In respect of Ownership.	In respect of Occupancy.
Parochial boards (including school rate)	£1,391,666	£695,833	£695,833
Burgh authorities	1,430,559	218,150	1,212,409
Commissioners of supply	201,739	184,602	17,137
Roads and bridges trusts:			
Counties	262,058	144,908	117,150
Burghs	160,881	90,932	69,949
County road trusts	69,602	34,801	34,801
Heritors for ecclesiastical purposes	37,884	37,884	—
District fishery boards	10,740	10,740	—
Total	£3,565,129	£1,417,850	£2,147,279

* See "Rates," Table XIII.

TABLE XVI.

SCOTTISH CHARGES BORNE BY THE CONSOLIDATED FUND AND PARLIAMENTARY VOTES, IN ADDITION TO THOSE SHOWN IN TABLE XIV.

(Extracted from Financial Relations Returns, Nos. 93 and 334 of 1893.)

	1889–90.	1890–91.	1891–92.	1892–93.
Clergy and schools	£17,939	£17,939	£17,939	£17,939
Court-house and legal buildings	9,710	8,547	8,800	8,350
Peterhead harbor	29,922	29,914	29,914	29,651
Caledonian canal	5,000	5,000	5,000	5,000
Rates on government property	10,082	9,288	12,135	10,350
Reformatory and industrial schools	70,084	595	71,087	62,800
Prisons	100,281	99,836	92,446	92,518
Law charges and courts of law*	119,279	119,888	119,598	92,684
Public education	562,284	611,152	636,638	948,854
Pleuro-pneumonia	—	16,800	16,800	6,000
Relief of local taxation	—	—	110,000	—
Public works, *etc.* (Highlands and Islands)	—	—	20,000	25,355
Police	155,076	} Defrayed out of allocated taxes in 1890–91 and after. †		
Pauper lunatics	91,322			

* This item is probably only to a very limited extent a relief of local taxation, if at all.

† Grants of £35,000 for main roads, and £20,000 for medical relief, were made in 1888–89. These are now also defrayed out of the allocated taxes. See Table XIV.

MEMORANDUM. — In a communication received from the Treasury, the total amount of Scottish local charges borne by imperial funds in 1891–92 is set down at £315,022, exclusive of education. No details are given.

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TABLE XVII.

LOCAL TAXATION IN IRELAND, 1892.

(From Local Taxation Returns, 1892.)

CLASSIFIED SUMMARY OF LOCAL TAXATION, EXCLUSIVE OF RECEIPTS FROM LOANS, AND FROM THE IMPERIAL TAXES.	Rates on Real Property.	Tolls, Fees, Stamps and Dues.	Other Receipts.	Total Estimated Local Taxation of Ireland.
1. Grand jury cess presented by grand juries (net amount)	£1,261,928	—	—	£1,261,928
2. Fees of clerks of the peace (exclusive of receipts from grand jury cess)	—	£3,242	—	3,242
3. Fees of clerks of the crown	—	348	—	348
4. Petty sessions stamps and crown fines	—	51,773	£5,841	57,614
5. Dogs license duty	—	39,484	311	39,795
6. Dublin Metropolitan Police taxes	33,821	10,345	3,680	47,846
7. Court leet presentments	—	—	—	—
8. Harbor taxation (exclusive of receipts from grand jury cess, and from sale of investments)	—	298,127	74,556	372,683
9. Inland navigation taxation (exclusive of receipts from grand jury cess)	—	1,974	2,305	4,279
10. Town taxation (exclusive of receipts from dogs license duty, fines, grants for specific purposes, grand jury cess, *etc.*, as above)	621,143	45,353	144,667	811,163
11. Burial board receipts other than from rates (exclusive of sums received by urban burial boards)	—	1,905	152	2,057
12. Poor rate and other receipts of boards of guardians (exclusive of repayment of relief, the burial board receipts which are included in No. 11, and payments from the general cattle diseases fund, *etc.*)	960,605	—	36,722	997,327
13. Light dues, and fees under Merchant Shipping Act	—	19,282	—	19,282
Totals	£2,877,497	£471,833	£268,234	£3,617,564

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TABLE XVIII.

CIVIL GOVERNMENT CHARGES, OF A MORE OR LESS LOCAL CHARACTER, BORNE BY THE CONSOLIDATED FUND AND PARLIAMENTARY VOTES, IN ADDITION TO THOSE FALLING ON THE ALLOCATED TAXES.

(Extracted from Financial Relations Returns, Nos. 93 and 334 of 1893.)

Ireland.

NATURE OF CHARGE.	1889–90.	1890–91.	1891–92.	1892–93.
Exchequer contribution to Ireland	—	—	£40,000	£40,000
Rates on government property	£31,253	£30,661	31,708	30,235
Public works and buildings	180,814	328,138	141,692	183,756
Railways	—	1,152	418,529	65,562
Law charges and criminal prosecutions	73,193	70,863	77,913	61,592
Dublin Metropolitan Police	143,741	89,673	92,640	93,675
Royal Irish Constabulary	1,412,680	1,574,530	1,373,740	1,345,303
Prisons	120,483	120,940	128,562	118,111
Reformatory and industrial schools	107,825	109,751	112,565	107,398
Dundrum Criminal Lunatic Asylum	6,864	6,975	6,951	5,743
Public education	866,320	868,496	834,719	994,517
Pauper lunatics	108,671	112,211	113,042	115,754
Hospitals and charities	18,552	18,582	18,349	18,195
Teachers' pension fund	—	—	90,000	—
Pleuro-pneumonia	—	20,000	20,000	40,000
Relief of distress	—	51,309	180,964	—
Laborers' cottages	—	40,000	—	—

MEMORANDUM. — In a communication received from the Treasury, the total of the Irish local charges borne by imperial funds in 1891–92 is set down at £2,042,359, exclusive of education. No details are given.

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REVIEWS.

Principles of Political Economy. By J. SHIELD NICHOLSON, Professor of Political Economy in the University of Edinburgh. Vol. I. London and New York, Macmillan & Co., 1893.—8vo, xiii, 452 pp.

Professor Nicholson, though far from "orthodox," in the sense often attached to that much-abused word, is known to lean toward a more conservative treatment of the doctrines of classic political economy than many of his English-speaking associates. In his able and scholarly address, which was printed in the *Journal of the Statistical Society*, he stated with emphasis his opinion that, in the reshaping of economic theory which is admitted on all hands to be needed, a good part of the classic structure should be permanently retained. The book before us is an endeavor to keep what is tenable, and discard what is not tenable, in the presentation of the subject by English economists from Adam Smith to Mill. It may be not unfairly described as an attempt to rewrite Mill's *Political Economy*. Although Professor Nicholson says that he owes more to Adam Smith than to Mill, his treatment in externals is modeled closely on that of the later writer. The present volume covers the ground of the first two books in Mill, on "Production" and "Distribution"; and in the main it follows, chapter for chapter, Mill's arrangement. Indeed, as the preface tells us, it grew out of notes and commentaries prepared in the course of text-book use of Mill.

Professor Nicholson, it is hardly necessary to say, is equipped for the task he has set himself,—a task none the less difficult because he has unassumingly accepted much of the results and methods of the writers of the past. He is versed in the literature of the subject, old and new; he has the firm touch which comes of opinions carefully considered; he has courage to retain old views that are out of fashion, and reject new ones that happen to be in fashion. The fact that he shows comparatively little of the influence of German thought, gives his exposition, in these days, a freshness of its own; though it must be confessed that it adds also to the unmistakably insular flavor that pervades the book. Whether or no economists concur in his doctrines or accept his methods and his point of view,

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they will agree that here is a notable contribution to the literature of the subject, and an attempt at a restatement of its principles that deserves, at the least, a very respectful hearing.

As to the success of the attempt, time and trial must be given before a final verdict can be rendered. I confess to an initial doubt whether this will prove to be, on the whole, that boon much desired by all teachers of economics — a satisfactory exposition of the body of doctrine which, in essentials, we all accept. It is no disparagement of Professor Nicholson's mode of presentation that it suffers in comparison with that of a master of style like Mill. Professor Nicholson writes with force and ease; but he has not the eloquent swing, the art of gradually unfolding a difficult train of reasoning, the faculty of illustrating and repeating without redundancy, which did so much to give Mill's book its commanding place. Further — and here we touch a more serious difficulty — there is the question whether it is advantageous for the learner or for the general reader, to retain so completely the traditional sequence of the different topics. In this regard, much more radical changes seem to me to be called for than are attempted by Professor Nicholson. Following Mill, he proceeds, after a few introductory chapters on utility, production, nature and labor, to an early consideration of capital, the law of diminishing returns, the principle of population. Distribution then follows in the next book, presented again, in the main, with Mill's order; while exchange and money are left entirely for a second volume. It would be a gain for the reader, fresh to the subject, if some consideration of money and exchange were introduced at an earlier point. The division of labor, as Adam Smith's example shows, leads naturally to the description of exchange, money, price and the whole mechanism of industrial societies. A considerable amount of descriptive matter may here be advantageously introduced, disposing of many of the cruder popular notions, and easing the way for the more complex questions of production and distribution. The details of the theory of money and prices may, indeed, be postponed to a later stage; but those who have been called on to expound economics to beginners will probably agree that the complete omission of this topic in the introductory chapters is a mistake. Similarly, it seems to be a mistake in the book on distribution, to treat first of private property at large, of inheritance and of property in land, and thereafter of wages, profits and rent. For the trained thinker this may be the more philosophic and satisfactory arrangement; but for the beginner and the general

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reader matters are simplified if distribution, as it takes place under a régime of private property, is first analyzed, and its justification and probable future are reserved for later treatment. Professor Nicholson, indeed, recognizes this in some degree by putting his discussion of socialism, not where Mill put it, at the beginning of the book on distribution, but at the very end; a shift which leaves a wide gap between the discussions of closely related fundamental questions.

So much as to presentation and arrangement. As to substance, the opinions of economists on Professor Nicholson's views must vary as widely as their own conclusions vary or appear to vary. To the present writer, he seems to have been more successful in his first book than in his second. Indeed, the first book seems to be more carefully worked over, both in manner and in matter, than the second. The chapters in the former on labor, diminishing returns, population, are excellent. The chapter on capital is perhaps less satisfactory, and might gain by a further infusion of those old ideas in new dress which the Austrians present in their doctrines as to productive and consumptive goods, or future goods and present goods. The chapter on consumption gives reasons for not accepting Professor Marshall's views on the significance of consumer's rent, but hardly succeeds in doing more than direct attention to limitations in the applications of that principle which Professor Marshall himself cannot be said to have neglected.[1]

In the second book, the introductory chapters (apart from the possible mistake in making them introductory) and the chapters on the history of custom, feudalism and land tenure, are again good; though a doubt might be raised here also as to whether the historical matter is introduced in the most advantageous order. On the deep-reaching question of the principles of ideal distribution, there will inevitably be difference of opinion; and it would certainly seem that Professor Nicholson lays undue stress on the efficient organization of production as the dominant aim of distribution. On the crucial and much-debated topics of general wages and profits, the exposition seems to the present writer least satisfactory of all. We have a rejection of the wages-fund doctrine in its bearing on general wages, with yet some implication that it has a basis of truth as to the dealings of particular groups of laborers with their employers. In fact, any basis of truth (and there is a substantial amount of it)

[1] In the *Economic Journal* for March, 1894, Professor Edgeworth presents some effective criticism on the objections raised by Professor Nicholson to the doctrine of consumer's rent.

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which may underlie the wages-fund version of the relation of capital to labor, seems to the present writer to apply to general wages only, and not to the wages of particular groups. As to differences of wages, again, there is in Professor Nicholson's chapter no sufficiently emphatic distinction between the differences which represent the equalizing effect of competition and those which are due to the the absence of effective competition: a distinction on which hinge the most perplexing problems of distribution and exchange. And as to general profits and interest, the exposition again seems vague and unsatisfactory. In passing, it may be remarked on the discussion of interest that Professor Nicholson, in accepting the term "waiting" in place of the old-fashioned term "abstinence," ascribes the innovation to Professor Marshall, who himself has been careful to credit it to the real author, Professor Macvane.

In the present stage of economic theory, comment on a book like this must largely represent the opinion of the individual critic, rather than judgment from the point of view of accepted scientific truth, and difference is not inconsistent with respect for the author's methods and conclusions. Whatever the views of the student of political science, he will extend a cordial welcome to such a volume, and will await with interest the next instalment, in which Professor Nicholson, already known for his capable treatment of monetary subjects, may be expected to complete his book by the discussion of exchange, money, finance and the functions of government.

HARVARD UNIVERSITY. F. W. TAUSSIG.

Les Bourses du Travail. Par G. DE MOLINARI. Paris, Guillaumin et Cie., 1893. — xii, 325 pp.

The position maintained by the editor of the *Journal des Économistes* in this book is that, since labor is a commodity of exchange, it cannot secure a fair chance for itself in the market till it makes use of the machinery by which the exchange of other commodities of a like wide demand is effected. Wages to-day do not represent a fair price for labor, because of the greater exigencies of the laborer's needs. While the capitalist can place his capital to the best advantage, regardless of time and place, the laborer must sell his labor at once and at the place where he lives. In other words, the laborer is still dependent on the conditions of the local market. The institutions of slavery, serfdom and the guilds of the middle ages attempted to give the laborer greater security, but they have proved

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inadequate. On the other hand, in the case of the great staples of commerce, an enormous extension of the market, an easy movement of the supply to meet the demand, and the fixing of a market price independent of local conditions, have been effected by a class of middlemen and speculators and through organized *bourses* or exchanges. The application of the same machinery to the labor market, and the consequent publicity in regard to the demand for labor in different localities, would give results of equal value. The complete transferability of labor would be at last effected, demand and supply would balance with accuracy, and an impersonal and just market price for labor would be established; then wages would rise and the labor problem would vanish.

This clear and vigorous argument by M. de Molinari only emphasizes once more, and more strongly than would a less able work, the futility of disregarding the real differences between labor and commodities. And even if labor be treated as a commodity, the author has not sufficiently tested its availability for speculative transactions through the medium of exchanges, which he advocates as the solution of the problem. In the first place, he overlooks the fact that the non-transferability of labor is due, not so much to the lack of adequate machinery of exchange or to ignorance of the foreign (non-local) demand, as to a more fundamental cause, namely, the will of the laborer himself. The laborer is after all a man. He has a wife and children, and desires a fixed habitat for them. He himself refuses to have his household moved hither and thither at every fluctuation in demand. Again, the extension of the market through exchanges has only been possible in the case of representative (fungible) goods. But labor, even if it can be graded like wheat or cotton, is seen not to be a good of this kind at all, when we consider that a man's capacity for work is a constantly varying quantity and dependent on numberless conditions. But furthermore, labor is something which is continually "spoiling." Its use (consumption) cannot be delayed. Every idle day is a net loss. While at the same time the cost of holding it back involves the enormous cost of maintaining the laborer. He cannot provide this support himself, nor can the middleman provide it. He is still at the mercy of the capitalist. Suppose holding back wheat meant a daily shrinkage of the stocks held and a continuous large outlay to keep them from becoming altogether worthless, — how long would a class of middlemen be found to handle such a commodity, or how long would its price remain independent of local conditions?

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Considerations of this kind show that the dependence of labor on a local market is a necessity of its nature, and that a world market cannot be created for it by the extension of any system of exchange.

COLUMBIA COLLEGE. H. C. EMERY.

Women Wage-Earners: their Past, their Present and their Future. By HELEN CAMPBELL. Boston, Roberts Brothers, 1893. —viii, 313 pp.

This book is an attempt to collect all the facts concerning working-women in a convenient and readable form. The author's purpose, as stated in the introduction, is to "aid all other women in their struggle, . . . to define the nature, the necessities and the limits of such struggle," and "to discover, through such light as past and present may cast, the future for women workers the world over."

Mrs. Campbell's opening chapter, on the condition of women from primitive times to the latter part of the eighteenth century, is quite unsatisfactory, and has little relation to the rest of the book. The following chapters, which show the employments for women during colonial times and during the early period of the factory system, the rise and growth of trades, the relation of labor bureaus to women, the present rates of wages in the United States, the general conditions for English, continental and American workers, and the evils and abuses attendant thereon, contain much information in an available form for the popular reader.

It is unfortunate, however, that the statistics are frequently so inaccurate as to render the book untrustworthy. For example, the table on page 108 is said to have been "copied with minute care from that given in the last census; and while it shows one or two deficiencies, the writer is in no sense responsible for them, its accuracy, as a whole, not being affected by the slight discrepancy referred to." It is perplexing to find, after this, that the percentage of males employed in book-binding is given as 4,831; of females, 4,553; of children, 616. In the table of the census report from which these figures are copied, the corresponding percentages are 48.31, 45.53 and 6.16. "Minute care," in statistics, involves attention even to decimal points. Neglect of this fact has rendered the author's table worthless.

Again, let us test the accuracy of the following paragraph:

In 1865 women operatives in the factories of Massachusetts were 32,239, or nineteen per cent of men operatives. In 1875 they were 83,207, or

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twenty-six per cent; and the increase since that date has been in like proportion. . . . In Massachusetts mills women and children are from two-thirds to five-sixths of all employed, and the proportion in all the manufacturing portions of New England is nearly the same. [Page 89.]

The Massachusetts census report for 1885 states that there were 83,207 women employed in factories in 1875. This is twenty-six per cent of the total number of persons so employed, and not twenty-six per cent "of men operatives." (The relative proportion of men and women was 35.67 women to one hundred men.) Taking the author's "nineteen per cent" in the same sense, as based on the total number employed, the increase from 1865 to 1875 was about seven per cent. In 1885 the number of women in factories was 112,762, or 28.58 per cent of the total number of persons employed in manufactures. The increase from 1875 to 1885 was therefore about *two* per cent, — by no means an increase "in like proportion" to that of the preceding decade. Furthermore, a comparison of similar statistics in the Massachusetts annual report on the statistics of manufactures for 1892, shows a decrease in the proportion of women employed in the 4473 factories from which these statistics are mainly collected. These establishments are engaged in seventy-five classified industries, and each year statistics are gathered from these establishments only; they therefore show the general tendency of industrial conditions. In 1885 women were 33 per cent of all persons employed in these factories; in 1891 they were 33.76 per cent, — a very slight relative increase; and in 1892 they were 33.45 per cent — a relative decrease as compared with the proportion of men. Mrs. Campbell's sweeping assertion that the increase since 1875 "has been in like proportion" to that from 1865 to 1875 evidently is not confirmed by statistics.

The statement that "in Massachusetts mills women and children are from two-thirds to five-sixths of all employed," is also open to criticism. The sentence is far from clear. It may mean that women and children are from two-thirds to five-sixths of all persons employed in factories, or of all women and children employed in any remunerative occupation. The figures presumably are based upon the census report of 1885. They cannot be correct with either interpretation. The number of females engaged in remunerative occupations in 1885 was 213,147; this number probably includes female children at work. If the 1907 male children be added, the total number of women and children engaged in remunerative occupations is found to be 215,054. In the same way, by adding the

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1081 male children employed in factories to the 112,762 females, the total number of women and children is estimated to be 113,843, — 52.93 per cent of all women and children in remunerative occupations, and 28.85 per cent of all persons employed in factories. In neither case are they "from two-thirds to five-sixths of all employed." The statement that "the proportion in all the manufacturing portions of New England is nearly the same," partakes of the same error. It is surprising that it could have been made by a writer who, on another page, says that women in Connecticut form "twenty-five per cent of all employed in factories" (page 192). It seems strange, also, that the relative proportions of women and children employed in factories are so different in Massachusetts and Connecticut. In Massachusetts, 112,762 females and 1838 children were in factories in 1885; in Connecticut (page 192), "over thirty thousand women and girls are engaged in factory work, and *ten thousand* children." So remarkable a statement should have been accompanied by the citation of statistical authorities.

Mrs. Campbell is at times as unsound in theory as she is inaccurate in statistics. She attaches importance to the so-called "just wage." "Just pay," she says, "heads the list of remedies" (page 251). But she must admit that there can be no other "just pay" than that which equals the value of the work performed; and that this value must be determined wholly by market conditions. Often the product practically adds nothing to the wealth of the world. "Just pay" would, in this case, be no pay. It certainly would not approximate the "minimal rate which will enable the least paid to live upon her earnings" (page 264). Would Mrs. Campbell be satisfied with such "just pay"? It is strange that she can employ this misleading term, since she very plainly sees the matter in its true light.

> The lowering of wage may be considered, then, as in one sense remedial, and the present state of things as in part the mere action of inevitable and inescapable law. . . . I have come at last to regard all as our education in justice and a demand for training in such wise as shall render unskilled labor more and more impossible. So long as it exists, however, I see no outlook but the fluctuating and uncertain wage, the natural result of the existence of the lowest order of workers. [Page 271.]

In considering the efficiency of women's work as compared with that of men, Mrs. Campbell on page 269 claims that, "given the same grade of intelligence, the work of women is fully equal to that of men." But on the next page she admits that women are especially

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deficient in the smaller virtues of "punctuality, unvarying quality of work, a sense of business honor and of personal fidelity, each to all and all to each," and that various physiological and social reasons make her "often a less dependable worker than man." These conditions may and often do accompany a high degree of intelligence, and, until they are changed, women's work cannot be fully equal to that of men.

The style of the book is often incorrect, awkward and ambiguous. The bibliography is defective, both in the French and the English authorities.

J. L. BROWNELL.

BRYN MAWR COLLEGE.

Outlines of Economics. By RICHARD T. ELY, LL.D. New York, Hunt & Eaton, 1893. — xii, 432 pp.

The most noticeable feature of Professor Ely's new work is his division of economics into two branches, private and public. To be sure, this classification is not altogether new. The Germans have their *Staatswirthschaft*, and the Italians also speak of the economy of the state. In America, the classification now adopted by Dr. Ely has long been used in the class-room by Professor Folwell, who has twice urged its general adoption before the American Economic Association. In the annual address before that body at Chautauqua he attributed the popular distrust of economics to the long neglect of public economy by the devotees of the science. But as he pointed out, the existence of a science of public economy has been tacitly admitted by American economists; and Professor James has recognized it in express terms by publishing a monograph on *The Public Economy of Pennsylvania.* Indeed, we may go back to the middle of the century, and find that Theodore Sedgwick had written on *Public and Private Economy*, and that Calvin Cotton was professor of "public economy" in Trinity College and the author of a book entitled *Public Economy for the United States.* Said Dr. Cotton in this work:

> We have not rejected the usual title of "*political* economy" because we proposed to enter a new field; but, chiefly, because the term "political" has been so much lowered in this country by the rude agitations of what are commonly called "politics," that we do not think the term now so well comports, among us, with the dignity of our theme.

But there are weightier reasons for rejecting the old name political economy than that given by Dr. Cotton. As used by the Greeks,

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and as revived by Montchrétien, the term political economy meant public economy; and it is plainly a misnomer when applied to the abstractions of private economics, as it has been for more than a century. Ruskin pointed out that the orthodox political economy was not political economy at all, but only a limited kind of commercial economy; and Professor Ely himself has expressed much the same thought in one of his essays.[1] Throughout the present work a careful distinction is made between *economics*, the science itself, and the private and public *economies*, the content of the science. In a foot-note the terms *social* and *political* economics are suggested as possible substitutes for *private* and *public* respectively: but social economics is too large a name for private economics; and since it would be impossible to restore the term political economy to its original meaning, perhaps it would better be dropped altogether.

It can scarcely be doubted that the division of the science into private and public economics marks an advance in classification; and Professor Ely has rendered a valuable service by employing it in a popular text-book. Without this classification, economists are doubtful whether finance is a part of economics; or, having settled that question to their own satisfaction, they are at a loss to know how much to include under finance. Some, like Leroy-Beaulieu, maintain that the science of finance has nothing to do with public expenditure; others, seeing that this is a logical impossibility, treat public expenditure as something the necessary amount of which must be known, but decline to examine the relative claims of particular objects of expenditure. This is wholly inadequate; the balancing of the accounts is not the whole of the problem. Just as consumption, long neglected by the older economists, has come to be recognized as the very foundation of economics, so public expenditure must be treated as an all-important part of public economics. Bastable, in his *Public Finance*, recognizes the incompleteness of any discussion of public expenditure which neglects its effects on the national and social economy. Many of the most important practical questions of the day are questions of public expenditure; they are not merely financial questions, in the usual sense of the term, and the public economist must consider them in all their relations to the well-being of society. By devoting more space to expenditure than to revenue, and by emphasizing the importance of legislation to private industry, Dr. Ely indicates the broad scope

[1] Social Aspects of Christianity and Other Essays, p. 120.

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of public economics. It is needless to say that he is still an advocate of the extension of governmental action in many directions.

The author tells us in his preface that this work was begun as a revision of the *Introduction to Political Economy*, but grew into a practically new book. It deals more with theory than the former work, and in future revisions this distinction will be retained. The new work is a marked improvement upon the old, not only in classification, but in many other points; notably in the treatment of value, where the theory of marginal utility is adopted. Dr. Ely's definitions are sometimes diffuse, but nothing could be more concise than this distinction between utility and value: "Utility is the capacity to satisfy wants; value is the capacity to excite desire." The clearness of style throughout and the skilful use of illustration will make the book valuable for exciting the interest of beginners in the study of economics.

MAX WEST.

UNIVERSITY OF CHICAGO.

Bericht der Börsen-Enquete-Kommission. Nebst 8 Anlagen: Stenographische Berichte über die Sachverständigen-Vernehmungen der Börsen-Enquete-Kommission. Berlin, Puttkammer & Mühlbrecht, 1893. — Folio, 8 vols.

In Germany the power of issuing bank-notes is vested in the Imperial Bank and in a small and constantly decreasing number of other banks, which exercised this right before the establishment of the Imperial Bank. The other joint-stock banks and private bankers receive deposits without any legal supervision or restriction, and on the other hand do a large business in issuing stocks and bonds and dealing in securities of industrial companies and in public loans. These different branches of business are managed jointly, and in 1890–91 unscrupulous bankers abused the opportunity for speculating wildly with the money entrusted to them.

A strong party, including the Agrarians and Conservatives, as well as the Anti-Semites and Social-Democrats, is opposed to the modern development of trade and of the exchanges. They introduced a number of bills, designed to check "the outrages of the exchanges, such as dealing in futures," to prevent the use of the stock and produce exchanges as gambling-places by outsiders, to protect depositors, and to bring the bankers under a close governmental control. Owing to the insistence of the parties affected that the propositions were impracticable, and based on

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insufficient knowledge of business life, the government appointed a committee of investigation, which included representatives of the different contending interests, business men, officials and scientists.

The first meeting of the committee, in which economic science was represented by Professors Schmoller and Cohn, was held in the beginning of 1892, with the president of the Imperial Bank in the chair. Since then it has met ninety-three times and heard the testimony of 115 experts, of whom thirty-nine represented the stock exchanges, sixteen the grain dealers, ten the agricultural interests, ten the flour mills, nine the coffee trade, six the alcohol trade, seven sugar, five the textile industries, eight science and jurisprudence, and five the press. As a basis of operations a printed schedule of questions was used, which was frequently revised as the committee gained experience. The information obtained in this way was supplemented by a number of important decisions of the different German courts, by a comprehensive treatise on the jurisdiction of the supreme court on dealing in futures, and by written opinions of experts. In addition to this a considerable amount of documents — regulations of all exchanges of the world, statutes, *etc.* — and statistical abstracts were collected and printed, together with the testimony, in a series of volumes as an appendix. The volume of statistics contains a most valuable introduction by Professor Schmoller, which demonstrates the influence which the exchanges have acquired on the distribution of capital. The report itself was presented in December, 1893, as a result of thirty-five separate meetings and two joint meetings of five sub-committees, dealing respectively with (1) the organization of the exchanges; (2) the credit mobilier; (3) dealing in futures; (4) quotations and the broker-question; and (5) the commission business.

The conclusions of the committee were the result of a compromise. It was agreed, in the first place, that "the exchanges have become an indispensable factor in the economic life of to-day"; therefore no measures should be considered "which might disturb or harm the justifiable and necessary functions of the exchanges." Nor was there any controversy as to the existence of great evils in connection with transactions on the exchanges. But as to the methods of abating these evils, different views had been urged. Some declared that governmental interference was not necessary; some that it would even increase the abuses. The reorganization of the exchanges, it was held, was more likely to be effected by moral reforms from within, than by the application of radical

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measures from without, which would prove a hindrance to the free development of trade. Others objected strenuously that what might be useful from the standpoint of the members of the exchanges, might harm the public. The outrageous gambling transactions and dealings in futures, the enormous losses due to the introduction of unsafe securities on the exchanges, had done much to decrease the wealth of the nation. Against the exchanges the private citizen was entirely defenseless; they could not be expected to attempt any serious reforms; therefore stringent public regulations were called for. The committee conceded the dangerous consequences which a violent encroachment on the complicated mechanism of the exchanges might have; but it denied that the idea of interference resulted from a feeling of especial hostility toward this branch of business, or from a desire to subject it to an exceptional law. "Legislation needs to enforce equalizing, protecting and supporting measures for all branches of modern economic life, wherever there is a danger that complete freedom may lead to practical disturbances for the commonwealth or any part of it."

The propositions of reform are divided into five parts, corresponding to the work of the sub-committees, and are substantially as follows:

(*a*) The exchanges shall be put under the control of the state governments, which may transfer the immediate supervision to boards of trade and chambers of commerce. The rules and regulations of every exchange must contain paragraphs as to the board, the branches of business which are the subject of the transactions, the conditions of admission to membership, and the methods of making quotations. The board must appoint a committee with jurisdiction over the conduct of the members of the exchanges, and may prosecute those who, "by dishonorable conduct or dishonesty, have lost the respect of their fellow-members." Among the punishable offenses are: malicious influencing of the quotations by means of fictitious transactions; spreading of false rumors; offering or accepting bribes for the publication or suppression of statements in the papers in favor or disfavor of certain undertakings; carelessness in the issue of stocks and bonds; instigating a man by dishonorable means, either personally, or by advertising, agents, letters, *etc.*, to speculate outside the limits of his business. Finally, speculating in behalf of clerks, officials and employees is strictly forbidden. Punishments are to consist of fines and suspension or expulsion from the exchanges. Besides the committee mentioned, a government commissioner is provided for, who may serve as attorney

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before it, and who has the right to investigate all questions brought to his knowledge.

(*b*) For the important business of issuing stocks and bonds a special board shall be appointed, in which shall be represented the interest of the bankers and banks, as well as of the purchasing public. Nominations of members of the latter class must be approved by the government. This board shall decide upon the admission of new securities. It must watch the public interest and that of the private buyers. The banking concerns introducing the said securities are responsible to the full amount of damages for negligence and for the publication of false prospectuses.

(*c*) Dealing in futures shall be subject to very strict regulations. The Bundesrath shall decide in what classes of articles it is permissible. Whoever wishes to do regular business in futures (*Terminhandel*) must have his name registered in a public book, and pay a considerable admission fee and an annual assessment. The most important propositions are directed against utilizing this dealing in futures for gambling purposes, and against those who induce outsiders to take part in such transactions.

(*d*, *e*) The propositions as to quotations, brokers and commission business are of a more formal character, and directed against certain abuses only. The local authorities are entitled to settle most of these questions in accordance with the needs of their locality. Experience has proved that artificial restrictions on the appointment of governmental brokers are useless or dangerous. The committee wishes to limit the activity of the official brokers to the issue of public quotations, *etc.* The rights and duties of the commission merchants are also regulated.

Whether these propositions as a whole will become law, is doubtful. The general belief is that most of them are reasonable and moderate, and that probably actual legislation will move on these lines. A bill is also in preparation to regulate deposit-banking. It has been shown in the course of the investigation that the efficacy of mere law is very limited, that healthy reform can be expected only from the good will of the parties concerned, and that a certain kind of lawyers will always be at the dealers' disposal to find means to circumvent the law.

But the government can, at all events, try to raise the standard of commercial morality, and to induce the business man to conduct his affairs on a basis corresponding to the generally accepted ideas of morality. The Prussian-German government has always shown its appreciation of that part of its social functions.

ERNST L. VON HALLE.

NEW YORK CITY.

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Report of the Committee appointed by the Tax Conference of Pennsylvania Interests to examine the Tax Laws of the American States. Harrisburg, no date [1892].—8vo, 18 pp.

Valuation, Taxation and Exemption in the Commonwealth of Pennsylvania. A report to the Pennsylvania Tax Conference by the Commission on Valuation and Taxation. 1892.—8vo, 34 pp.

Report of the Tax Commission of Ohio. Columbus, 1893.—8vo, 77 pp.

The Injustice and Inexpediency of Double Taxation. [By GEORGE C. CROCKER.] Boston, 1892.

Double Taxation Unjust and Inexpedient. By RICHARD H. DANA. Boston, 1892.—8vo, 32 pp.

Hearings before the [Massachusetts] Joint Special Committee on Taxation. 610 pp. *Full Report of the Committee.* 109 pp. Boston, 1894.

The activity of the tax reformers goes on apace. Everywhere we find more and more unrest and dissatisfaction with existing conditions. Already in these pages (POLITICAL SCIENCE QUARTERLY, VI, 182, and VIII, 549) the tax reports of Pennsylvania, Maine, Delaware and New York of the last two or three years have been reviewed. Now Ohio and Massachusetts have come forward into line; Pennsylvania is continuing her investigations, and various other states have started out on an examination of present conditions.

The Pennsylvania conference was formed on somewhat novel lines. As a result of the tax-commission report mentioned above, a bill was introduced in the Pennsylvania legislature, but met with opposition sufficient to defeat it. It was thereupon proposed by Senator Price that representatives of the different interests of the state be called together to ascertain the actual facts of taxation in Pennsylvania as compared with other states, and to report a bill which would be satisfactory to these interests. As a consequence, twenty-four representatives of agriculture, transportation, commerce and manufactures, labor and the tax officials themselves, met at Harrisburgh in February, 1892. This conference appointed committees: one to examine and report upon the value of the various classes of property in the commonwealth; another to examine the tax laws of all the states; and a third to formulate the statement of principles on which the reform should be based. The committee on tax laws of the various states has brought in a report

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which is valuable chiefly for the three tables which digest the tax laws of the Union. The committee itself makes but few recommendations — generally of a very sensible character. Some of their statements of fact are erroneous, as for instance, when it is said that an income tax has no place in the fiscal polity of any American state. The committee also repeats the old error that the property tax is, and ought to be, based upon the theory of governmental protection. The committee correctly holds that an income tax will not be equitably levied by elected officials, and it further holds that a single tax on land values will increase the burden on the poor. It finds the best feature of the Pennsylvania system, as over against the systems of other states, to be in the separation of the sources of state and local taxation. The committee cursorily mentions several other points, but refrains from making any specific recommendations because the members have not studied long enough to enable them to effect a complete harmony of views. The report, therefore, is important more for the facts it contains than for anything else.

The report of the other committee, the so-called commission on valuation and taxation, contains some interesting matter. It has attempted to ascertain the facts not only as to assessed valuation, but also as to actual value. It has sought to accomplish this first by taking the insurance valuations on insurable property, and secondly by making special investigations through separate agents. The preliminary report, which alone is presented, contains some interesting figures. It shows, for instance, as has already been frequently pointed out, that the land values in the cities bear a much smaller proportion to the improvements than is the case in the farming districts. In Philadelphia, for example, the land values are only thirty-six per cent of the entire real estate values, while in the farming counties the land values run up to seventy-five and eighty per cent of the whole. This is a very bad showing for the single-tax advocates, as such a proportion has always been vehemently denied by them. Many other interesting tables are given as to the value of different kinds of property, but no attempt is made to draw any special lesson therefrom, and in many cases the endeavor to ascertain actual values is acknowledged to be only moderately successful. The valuation of property based on insurance turned out to be very unsatisfactory, as might have been anticipated. The remainder of the report, in addition to a statement of the existing revenues of Pennsylvania, which are put in a very clear form, is devoted to a short description of property exempt from taxation in the state.

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It is as yet too soon to judge of the final result of the conference's work. It has been a novel experiment, based entirely on voluntary action, and the work has certainly been taken up in the proper spirit. If the results thus far achieved do not amount to very much, it is probably due to the shortness of the time and the inherent difficulties of the task. But Pennsylvania has always been at the head of tax reform in this country. And we may confidently expect some good results from the future labors of the conference.

The tax commission of Ohio, which was appointed in April, 1893, has evidently turned to good use some of the recent scientific writing on public finance. Most of the theories advanced are in accord with the sounder views, and everywhere an endeavor is made to conform to the necessities of practical reform. The commission tells us again how utterly inefficacious the listing system has been in Ohio. The "tax-inquisitor" law produces less than two per cent of the taxes, the greater part of which is paid by the rural counties; while intangible property altogether pays only nine and four-tenths per cent of the state taxes. The commission calls attention to the fact that this is simply a revival of mediaeval conditions, and recommends a complete repeal of the "tax-inquisitor" act. The attempt to reach intangible property directly by taxation, is declared impracticable. It is very significant that according to the full statements of the commission the personal property tax in Ohio costs in some of the counties thirty-four per cent to collect. This in itself shows the absurdity of the law.

The commission, however, strongly maintains that as the only just principle of taxation is that of contribution according to ability or faculty, an effort must be made to reach intangible personalty in some other way. In a well devised system taxation must on the whole be proportional to income or earnings, and yet the direct income tax is impossible in this country as a state tax.

Their solution of the problem may be summed up in a few words: the taxation of real estate and tangible personalty; the inheritance tax, increased and extended; a franchise tax on corporations and enterprises; and the beginnings of a system of business taxes, through a tax on transfers of property, law proceedings, *etc.* A full and valuable account is given of the taxation of corporate enterprise, in which it is shown that while banks pay from seventeen to twenty-three per cent of their net income, and city real estate from fourteen to twenty-five per cent of its rentals, railroads pay only five to twelve per cent. This is one of the most interesting feat-

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ures of the report. The assessed valuation of railroad property is compared with that of 1892, and an attempt is made to get at the true valuation based on a comparison of gross and net earnings, stock exchange quotations and bonded indebtedness. The results are surprising, but seem to be sound. In fact this part of the report abounds in intelligent comment. The commission earnestly contends that the correct measure of corporate ability and taxation is income, or earning capacity, and recommends the system of corporate taxation based on the more approved methods. Altogether the report of the Ohio commission is one of the most cheering evidences of the growth of saner and more enlightened views on the subject of taxation. It does not exhaust the subject, but it certainly goes a great way toward the improvement of existing conditions.

The Massachusetts system of taxation has long been marked by several peculiarities. Massachusetts taxes incomes; it does not tax mortgage notes on real estate; and it does tax shareholders of foreign corporations, whether or not such corporations are taxed by their own states. A great deal has been written in Massachusetts on the subject of double taxation. But when this phrase is used, it means either the simultaneous taxation of property and income derived from property, or the taxation of the shareholder in a foreign corporation when the corporation itself is taxed. The two essays by Mr. R. H. Dana and Mr. Crocker use the words double taxation only in the last sense, and are strong pleas for the abolition of this practice. Of course it need not be pointed out that to exempt the shareholder in domestic corporations, while taxing the shareholder of foreign corporations, is a plain violation of the rule of equality. The special committee devoted a considerable share of its hearings and report to this point, but decided for the continuance of the present practice. As a matter of fact the testimony taken by the committee is on the whole far more valuable than the report. For although the report contains a few good suggestions, it discloses very little acquaintance with modern views, and is distinctly inferior in this respect to that of the Ohio commission. Thus, for instance, the report does not attempt to recommend any more comprehensive system of corporate taxation, such as exists in Pennsylvania and New York, and it does recommend a continuance of the income tax. In arguing the latter point it advances the remarkable statement that any attempt to abolish the income tax in England, Germany and France would probably result in a revolution. When we reflect that the French Revolution resulted in the abolition of their income

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tax and that it has been impossible to create a new income tax since the revolution, the force of this statement becomes apparent. We are thus prepared for the final recommendation of the committee, which is nothing more nor less than the introduction of the listing system as the best solution of the Massachusetts tax problems. This is a sorry outcome of the long inquiry.

On the other hand, however, there are some interesting points in the report. It shows how impracticable the single tax theory is. According to the testimony of the single-taxers themselves, it would be impossible to raise sufficient revenue in the farming counties, and they recommend that the poor towns receive aid from the more prosperous. The committee pertinently asks: Where is this aid to come from?

Again the committee strenuously advocates the introduction of a graduated inheritance tax, and quotes quite liberally from Dr. West's recent monograph on the subject. They also object to the exemption of municipal bonds from taxation, on which topic there is much to be said on both sides. Finally they call attention to some of the results of the exemption of mortgage notes, and show that the advantages to the mortgagor have been grossly exaggerated.

The report, therefore, is a mixture of good and bad. It does not propose any comprehensive reform and it does not grapple with the subject in all its bearings. It is on the whole a distinct disappointment, and students will derive more profit from the testimony than from the report itself. It is encouraging to learn, however, that there is little prospect of the adoption of the committee's retrograde recommendations, while the better propositions, like those for an inheritance tax, are attracting considerable attention and support. Massachusetts has much to learn before putting herself on a par with Pennsylvania.

EDWIN R. A. SELIGMAN.

Anthropo-Geographie. Von FRIEDRICH RATZEL. Vol. II. Stuttgart, Buchdruckerei von E. Engelhorn, 1891. — 750 pp.

This work is part of the *Bibliothek Geographischer Handbücher*, and the first volume was issued in 1882. A good opportunity is offered, therefore, for noting the fruit of the ten years' study which has intervened. There is no need of course to recommend the book to students of the subject; the author's name is a sufficient guarantee of its scholarly character. Yet it cannot be said that its true import-

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ance is measured by its actual contributions to science. The proper significance of the book lies in the avowed aims of its author, rather than in the conclusions attained. The main purpose of the work is to bring the social sciences into proper relations with geography. Particularly is this important at present, when the trend of sociological thought seems to be toward a keener appreciation of the economic and material bases of social life; or in other words, toward the interpretation of social phenomena in terms of biologic and natural law. Society in this later view is not merely the result of conscious human effort, which has the power once for all to set aside the limitations of environment as soon as social life begins. It is to a considerable extent the product of forces greater than those of human will, which act continually through such environment.

Experience has fully justified the author's enthusiastic plea in his earlier volume for a closer study of geography in its bearing on social science. The most notable recent example of the tenability of his position is offered by the brilliant contribution of Professor James Bryce in the *Contemporary Review* for July, 1892.

> Geography [says Mr. Bryce] is the point of contact between the sciences of nature taken all together and the branches of inquiry which deal with man and his institutions. Geography gathers up the results which the geologist, the botanist [and] the zoölogist have obtained, and presents them to the student of history, of economics, of politics, as an important part of the data from which he must start and of the materials to which he will have to refer at many points in the progress of his researches.

There is perhaps a tendency on the part of Professor Ratzel to exaggerate the importance of his subject, but that is a failing common to all earnest students. The only criticism which ought to be made upon the work as a whole is that the mode of treatment is too strictly geographical. Professor Ratzel is a geographer *par excellence*, and all other branches of knowledge are made to pay tribute to his favorite science. In a work of this description, however, which seeks to lay the foundations of a science of "anthropogeography," two distinct modes of treatment are possible. On the one hand the work may be descriptive, statistical and encyclopædic, like Patton's admirable *Resources of the United States*. Such a treatment presents the bare platform on which social characters are set at work; but it never suggests new combinations in the setting. On the other hand there may be given a broad-line sketch of the earth, together with some description of the parts which the social

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forces are to take. Such a treatment, drawing at once upon biology, botany and geology, becomes correspondingly more suggestive. An example of this method we find, though rather popularly than scientifically employed, in Professor Shaler's *Nature and Man in North America.*

Professor Ratzel seems to have taken an intermediate course, containing elements of each method, but embodying neither in purest essence. He employs the statistical and descriptive method only in the chapters upon population, which are really discussions of methods as much as of results, and are in most cases very readable. But he seems to have left untouched many phases of the subject, which, if interpreted in terms of the theory of evolution, would have vastly broadened the field of view. For example, the subject of acclimatization, which to many constitutes a most important branch of social theory, is rather neglected, despite the fact that the whole theory of race dispersions depends to some extent upon our judgment with regard to it. Again, the study of plant and animal geography is one of the main supports of the theory of evolution in the hands of a master like Alfred Russell Wallace. A knowledge of the conclusions of Wallace and Gray is of profound import for one who would correctly interpret and criticise any theory with regard to the dispersion or filiation of the great races of men. Westermarck finds laws of the animal group a cogent argument in support of his theory of the human family. Ought we not to apply the same reasoning to the cognate problems of the migrations of the human race? The whole drift of modern opinion, from Wright to Romanes, is in favor of such a mode of study. And yet Professor Ratzel, devoting many pages to the effects of forests upon social life, is content to pass by the causes which produced this distribution of vegetable life as it to-day exists. He studies forests, and all else in fact, statically and not dynamically, to use a much abused expression; and thereby he stops short of the work which might truly be expected of the anthropo-geographer. If, as certain expressions tend to show, he accepts the theory of autochthonous man, there is obviously no suggestiveness in a comparison of plant, animal and human migrations. But no student can deny the evidence of such migrations, at all events in the sub-human kingdoms. Does not the true scientific attitude of mind demand that, while still reserving decision with regard to man, we shall recognize the possibility of obtaining results by comparison with the movements of lower forms of life?

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One of the most successful portions of the work is that which deals with statistical method, the graphical representation of populations, and the classification of races; and this second volume offers a convenient *résumé* of these subjects. But it is a book for the expert statistician and geographer, contrasting in some respects with the work of Professor Oscar Peschel. Some results obtained by the latter might be used with profit to supplement portions of Professor Ratzel's work. For example, the effect of coast lines upon the development of the art of navigation would materially broaden the scope of the chapter upon coasts and rivers. There are admirable chapters upon the effect of climate, mountains, rivers and seas upon social evolution, although we should hesitate to credit too close a connection between the ruling rate of wages and climatic conditions. It savors of the conclusions in the *History of Civilization in England.* The chapter upon the growth, localization and constitution of cities, forms one of the best parts of the second volume.

It should finally be noted that for the sociologist these volumes contain an immense mass of material which has never before been put together. They should serve as the groundwork on the one hand for a broader social science, and on the other for a keener appreciation by geographers of the true place of their science in its relations to man.

WILLIAM Z. RIPLEY.

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La Population, les Causes de ses Progrès et les Obstacles qui en Arrêtent l'Essor. Par ÉDOUARD VAN DER SMISSEN. Paris, Guillaumin, and Bruxelles, Société Belge de Librairie, 1893.—8vo, 564 pp.

Histoire de la Population Française. Par Lucien Schöne. Paris, Arthur Rousseau, 1893.

The somewhat startling returns of birth rates in France disclosed by the census of 1890 led the Academy of Moral and Political Sciences to choose "Population" as the subject of competition for the Rossi prize in 1891. Two of the works presented appeared so nearly equal in merit that both were crowned, and both have since been published under the titles above.

M. Van der Smissen's bulky volume is composed of an introduction and three parts, entitled respectively "An Historical Sketch of the Movement of Population," "The Laws of Malthus" and "The Population Question in the Nineteenth Century."

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In his "Introduction" the author points out the importance of the general subject and the attention it excites among scholars and statesmen. Exaggerated views find expression in the writings of two types of alarmists, — those who fear *over-population* and those who expect *depopulation.* M. Van der Smissen is by no means a Malthusian, but he vicariously assumes the defense of Malthus from his friends, showing that he never supposed that the tendency to over-population would not cease. The error of Malthus consisted in not recognizing, as did Bastiat, the essential harmony of natural with economic laws, and in failing to understand that the increase of population, in its development of economic activities, solves the problem of subsistence. Historically speaking, human fertility has not been responsible for famines or for the foundation of colonies in ancient, mediæval or modern times. Imperfect transportation facilities, on the one hand, and political or commercial motives, on the other, furnish the explanation. Neither should the tremendous increase of population during the present century inspire disquietude. Never has the lot of the humblest been so favorable as now; nor is the subsistence question likely to present difficulties while the United States has but two and one-half inhabitants per square mile, South America, one and one-quarter, Australia, an inhabitant to every one and nine-tenths square miles, and Africa is left out of the account. Commercial intercourse has not yet been developed to the farthest point, nor has final utility in connection with drainage, fertilizing and irrigation been reached.

In dealing with the exponents of the depopulation theory, the author is particularly severe. He calls them a disgrace to demographic science, and exhorts them earnestly in many pages to give up their doctrinal heresies.

The historical sketch begins with the family institution in antiquity, and closes with the eighteenth century. Only salient facts are treated, and the moral seems to be the utter futility of legislation to accomplish *directly* an acceleration in the movement of population. It was as impotent in the reign of the early Roman emperors, as in the days when the soft-hearted Prussian monarch reduced by royal decree the period of mourning for widowers to three and of widows to nine months, and England's precocious minister offered his celebrated premium on large families, which Herbert Spencer avers to have been the prime factor in quadrupling the poor-tax during the succeeding half-century. In the movements of population economic motives are fundamental, though

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as societies advance to a higher plane, social and social-economic considerations have increasing weight. Legislation influences indirectly by inducing changes in the institutions, habits and, above all, in the economic opportunities of the people.

The second book is devoted to Malthus and his theories. It is pointed out that he was influenced largely by the thought of his time. In economic circles the population question was much discussed during the second half of the last century, and it was against the extreme optimism of the period that Malthus raised his voice. His theory of population must be regarded as an aggressive protest against what for more than half a century had been regarded as dogmatic truth. Our author does not share the views of Malthus to any considerable extent, and his lack of faith is contained in an elaborate, though not especially novel, criticism.

In Book III the author discusses a great variety of topics relating to the development and the movement of population in this century, classifying the phenomena into economic, social and legislative. The second category seems to embrace everything not specifically included in the other two. Fecundity of marriage, in comparison with economic circumstances, is a prominent theme, and it is to be regretted that the author has confined himself, in discussing it, almost wholly to France, whose position, as every economist knows, is quite exceptional. The data treated do not certainly furnish a broad enough basis for generalization. The writer has hazarded an opinion which at first blush would seem the height of folly in a candidate for favor before a body of French economists. He asserts that sometimes there is as much virtue in a numerous family as in a savings-bank account, considered as a measure of prudential economy. What gave him courage to write this does not appear from the text.

Under the head of economic influences he discusses emigration and colonization, progress in agriculture and industry and the condition of wage-workers. Opportunities for economic activity, the author concludes, are the mainsprings of development.

The chapters on legislative influences are specially conceived for the existing situation in France. The great end to accomplish is to induce married couples to have children, and this can best be done, Mr. Van der Smissen thinks, in the first place by a thorough revision of prevailing fiscal laws, some incongruous effects of which he has aptly illustrated. Another important reform is to institute a tax on inheritances at the following rates:

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International Statistical Institute: Papers presented at the session in Chicago, September, 1893. Publications of the American Statistical Association, No. 24. Boston, 1894.—8vo, 186 pp.

The International Statistical Institute holds a meeting once in two years. In previous years it has visited London, Rome, Paris and Vienna. The session at Chicago, although not largely attended by the foreign members, was a noteworthy gathering for the United States, and maintained, in the papers submitted and the discussion which followed, a high scientific character. The American Statistical Association took charge of the preliminary printing of papers for the use of the members, and has now gathered these papers together into a volume. This will not supersede the regular printed "Transactions" of the institute, but will anticipate it, and present the most important papers in a form more accessible to the American reader.

Naturally, the papers by Americans are most numerous in the list, on account of the holding of the session here. Among the foreigners, Levasseur is represented by an admirable report on the "Statistics of Primary Education," and Körösi, of Budapest, by a valuable proposition for an "International Mortality Standard or Mortality-Index," a subject which has been engaging the attention of vital statisticians in Europe for some time. Mr. A. E. Bateman, of the British Board of Trade, reported on the "Comparability of Trade Statistics" of various countries, and Dr. Mandello explained the "Currency Reform in Austria-Hungary."

Among the American papers the most generally interesting, perhaps, would be the five on anthropometric statistics, brought together under the direction of Dr. Edward M. Hartwell of Boston. They show the growth of the science in America, and some of the results already attained. Professor Henry C. Adams gave a valuable paper on "Railway Statistics in the United States," which was supplemented by two or three papers on practical railroad statistics by men engaged in the business. Other papers were on "The Course of Wages in the United States since 1840," by Carroll D. Wright; "Prices," by F. W. Taussig; "Geographical Distribution of Population in the United States," by Henry Gannett. There are twenty papers in all. Most of them have particular reference to the United States. It may be doubted whether any more important collection of essays, from the statistical point of view, has ever been issued in this country.

RICHMOND MAYO-SMITH.

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Die Entstehung der Volkswirthschaft. Sechs Vorträge. Von Dr. Karl Bücher. Professor an der Universität Leipzig. Tübingen, Laupp, 1893. — 304 pp.

With the appearance of Karl Bücher's book on *The Population of Frankfurt in the 14th and 15th Centuries*, the cause of historical investigation — especially in the direction of mediæval social and economic development — received a new and powerful recruit, marked by an independent personality and wielding new weapons of attack. Town history had hitherto been monopolized either by lawyers and historians, who took an exclusively constitutional point of view, or by economists, who had laid stress only on one institution, namely, the gild. A happy chance put into Dr. Bücher's hands the tax-rolls of mediæval Frankfurt; and by applying to these the usual statistical methods and viewing the results in the light of modern economics, he was able to arrive at a knowledge of civic conditions four centuries or more ago that surpassed in distinctness and coherence that of perhaps any other writer. Unlike the lawyers, he has gone behind constitutional mechanism to the men by whom it was worked; unlike most of the economists, he has sought to place the facts of industry in some sort of relation to the total life of the city. And perhaps because his original training was not in mediæval history or in economics, and because, before taking the Leipzig chair, he had some extra-academic experience of men and affairs, he brings to his work a freshness of thought and style that is rather exhilarating.

Of the six lectures in this book, the fourth, on the social stratification of the Frankfurt population in the middle ages, is a summary of the results of his great work. It is the best attempt I know of to present in brief the significant features of mediæval town life in its economic or sociological aspects. The author abides by his minimizing estimate of civic population; and even the brief account of the matter which he gives here shows pretty clearly that he cannot be far underestimating it — even if there may have been a floating and non-burgher element somewhat larger than he is inclined to allow.

Of the other essays, some are "fugitive pieces" of little permanent value; but two are certainly suggestive reading, and well worth reprinting. One is on "The Rise of the National Economy" ("*Volkswirthschaft*," which is hardly translatable). German economists are perhaps a little unfortunate if they think they need be

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greatly affected by the term *Volks*wirthschaft in their conception of their subject; for it is easy to point out, as Bücher does, that there was no *national* economy until comparatively recent times. Besides making this point — which after all is not a very novel or important one — Bücher proceeds to give a sketch of economic development viewed in what he regards as the only fitting light, the relation between the circle of producers and the circle of consumers. In so doing he succeeds in putting a good many old things in a new and delightful way; but he seems to think himself rather more original than is really the case. Professor Schmoller's sketch at the beginning of his papers on the economic policy of Frederick the Great of Prussia anticipated him in much that he says, and in some points is distinctly preferable. And Dr. Bücher does not altogether avoid the danger of a specialist — of disregarding other and important elements in the problem. The agrarian evolution of Germany is hard to subsume under the categories suggested by civic life; yet Dr. Bücher hardly seems aware of the difficulty.

Another and more valuable paper is that on the sequence of industrial systems. Here he does well to call attention to the difference between the "wage-work" so common with the mediæval craftsman, and the forms of "handicraft" of which we more commonly think, where the craftsmen manufactured for the general market. But it may be questioned whether it is useful to regard these as separate systems, as our author does.

Altogether the book is one to be warmly welcomed. It is the work of a man who in a part, and that a large part, of his field has an unrivaled acquaintance with minute facts; and yet it is one full of broad views and sweeping generalizations. To read it gives a sense of enjoyment like standing on a hill top in the face of the wind.

HARVARD UNIVERSITY. W. J. ASHLEY.

The Dawn of Italian Independence. By WILLIAM ROSCOE THAYER. Boston, Houghton, Mifflin & Co., 1893. — 2 vols. 453, 415 pp.

Few things are more unreal to most of us than the events which are just beyond our own memories and which yet have not become recorded history. That border-land is more or less a trackless region which separates the making of history from the historic past. No story, therefore, is more interesting in itself than that which crosses this region and brings history up to, and into immediate and

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causal relation with, the events with which we are ourselves personally familiar. From such border-land no story can be brought to us more romantic as history, or richer in wisdom and inspiration to those who can read and interpret it aright, than that of the regeneration and unification which was wrought for Italy and the Italians within the memory of still living men, and the whole reach of which connects the Congress of Vienna with the present time.

Mr. Thayer has here told this story only as far as the fall of the Venetian Republic in August, 1849, and the extinction, thus, of the experimental movements of 1848. He has very justly regarded this period as "the dawn" of a day to come after. The story is ably told, clear in plan and construction, painstaking and thorough in the mastery of data and material and in the marshaling of details, and fresh and graphic in literary treatment. This much should be said at once. But what of the point of view from which Mr. Thayer writes? If to take a stand at the extremest left — to identify oneself in bias with the most radical theories into which Italian patriotism was betrayed by the conditions under which the revolution was first precipitated, with the theories of which he is telling the disastrous failure — be a qualification for treating this subject, none could be better fitted for the task than he. But if a more balanced and impartial judgment be an important qualification for the historian of such an epoch, then there is much to be regretted in the standpoint from which Mr. Thayer writes.

When Pius IX claimed that *he* was the church, and meant by that claim that Christianity itself was practically involved in loyalty to him and in steadfast resistance to the national movement, his dictum was accepted, not only by those who drew the conclusions at which he aimed, but equally by those who reasoned in the reverse direction and based their theories of action on the assumption that the church and Christianity *were* natural obstacles to the political freedom and prosperity of Italy. It is from this latter standpoint that Mr. Thayer writes. With Mazzini and Garibaldi, he would seem to confound monarchy with absolutism; and he cannot, therefore, fully sympathize with that trust in constitutional monarchy, as represented by the House of Savoy, which was the vital principle in the constructive statesmanship of Cavour and of the *Moderati*. Even less is he able to sympathize with the politico-ecclesiastical distinctions and discriminations which can alone interpret that statesmanship in its dealings with the church and with the papacy. For that statesmanship accepted Christianity; it assumed that Latin Christianity,

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or Catholicism, was the only genuine Christianity for the Latin race, or Roman Christianity for the Romans; and it referred the ecclesiastical evils which Italy had suffered, not to Latin or Roman Christianity, but to the temporal power which had been superadded to these, and to the feudal papacy which had been built upon them. And even this feudal papacy Milman claimed was the one great moral saving-power in the midst of all the social violence and corruption around it, without which "it is impossible to conceive what would have been the confusion, the lawlessness, the chaotic state of the middle ages." But Mr. Thayer distinctly places "a thousand years of Roman Christianity" in the forefront of the causes of Italy's degradation; and he would seem to hold that to break away wholly from Christianity was an essential part of the modern regeneration of the Italians. Be this as it may, it was certainly not the conviction of those who, politically speaking, made Italy.

This attitude of Mr. Thayer is especially to be regretted, first, because in a large proportion of those who will read these volumes with deepest interest, it will work distrust of a writer subject to so serious a bias; and then, because it would, if carried into his after judgments, really incapacitate him from seeing to the very heart of his subject. But as one reads on, he comes to realize that the first is by far the greater danger. The most accurate estimates of institutions and of the social conditions of the times are, indeed, still and very unnecessarily mingled with slurs upon the truths and faiths which lay back of them; and even deserved censure is rarely relieved by any acknowledgment of the good, the piety, the noble religious spirit of which no candid historian would deny the reality. But either the feeling with which the earlier chapters were written was itself greatly modified as the writer followed sympathetically the progress of events; or else the transition from generalizations to the narration of facts and the characterization of men, removed him from the occasion and from the temptation to yield to it. At all events, the reader does come almost to forget the hostility to Christianity in which the introductory review had been conceived, and so learns to trust as well as to admire the narration little the less.

This is certainly well; for no one who, in an ultra Teutonic spirit, puts institutional Christianity, as such, among the agencies which reduced Italy to moral and political servitude, or who fails to see that a restored and regenerated Catholic Church has shared with Italy in her redemption from the anachronisms of the temporal power and of the papacy, can fully enter into the whole

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meaning to the modern world of that regeneration of which he writes. If this was not the faith of a Mazzini, or of a Garibaldi, or of the radical enthusiasts, the story of whose impracticable efforts and most disastrous failures to liberate Italy Mr. Thayer so faithfully records, it *was* the political judgment of Cavour and most assuredly the patriotic faith of Ricasoli, of D'Azeglio, of Minghetti, and generally of the party which actually achieved the unification of Italy and made possible the regeneration of the Italian people.

Taking leave, then, of Mr. Thayer's summary of the causes of Italy's degradation, there are to be found even in this First Book foreshadowings of sounder and more constructive thinking. On page 43, he most felicitously characterizes the Italians themselves:

> In no other country in the world, not even in Greece, has a race manifested so varied a sensibility as in Italy. The wonderful keenness, delicacy and energy of the Italian character, responsive to the smallest diversity of place and condition, blossomed in new forms of individuality, each differing from the rest. At a time when England or France had hardly one center from which the national life-blood pulsated through all the members of the people, in Italy there were a score of such centers, each distinct, each throbbing with life.

Chapter V, on Dante, is a monograph — an admirable presentation of the prophetic relation of the great Florentine to the great *risorgimento* which was to come so long after. In Chapter IX, the bugle blast of Alfieri is heard, giving the first signal for the actual reawakening. From this forward, beginning with the Second Book, the reader is in the presence of living men and a witness of real events. In vividly and forcibly describing episodes and in characterizing great and representative personalities, Mr. Thayer is at his best.

The long past closed with Buonaparte, making the opening years of the new century a period of inspirations, as their era-making fellow-countryman, again and again, for however selfish a purpose, told them that they were Italians and breathed into them the first stirrings of a national spirit. And then our point of political departure is found in the graphic account which Mr. Thayer gives us of the Congress of Vienna and in his characterization of Prince Metternich. Understanding that congress and "knowing him, we shall know the nature of the resistance which checked every patriotic impulse, every effort towards progress in Italy, between 1815 and 1848"; and why it was an inexorable necessity of the situation that Italy should not be suffered to become other than "a merely geographical expression." For fifteen years more then, it was politically

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speaking, yet night. Not even the dawn had come; and nowhere can we get a better idea of what that night was to Italy, than in this Second Book.

But — not to go into further detail — the story of that dawning, when it was come; its aspirations, its theories, its conspiracies, its disasters, its lessons and preparatory training for the day itself, — is a rich storehouse of narrative, of description and of portraiture. The clear account of the Papal Conclave at the election of Pius IX, with which the second volume opens; the appreciative analysis of the attempted statesmanship of Gioberti; the brilliant story of "The Five Glorious Days of Milan" — these are only the more conspicuous among the episodes of the narrative. The admirable studies of Gioberti himself, of Mazzini, of Pope Pius and especially of Charles Albert, are illustrations of Mr. Thayer's genius for characterization. That of the almost martyr King of Sardinia is perhaps alone in its thoroughly just estimate of the man and in the true explanation of his strange and, to most writers, inexplicable course.

No one can close these two volumes without earnestly looking forward to the continuance of the work, in an account, by the same author, of the finally successful unification of Italy. But it is to be as earnestly hoped that, in meeting this expectation, Mr. Thayer may be able to rise wholly above the unworthy religious level on which he began that now before us. For the story of the unification of Italy is a religious story; its action is on the spiritual uplands of modern history; its results were the triumphs of genuine faith and spiritual insight.

WM. CHAUNCY LANGDON.

WASHINGTON, D.C.

Civilization during the Middle Ages. Especially in Relation to Modern Civilization. By GEORGE BURTON ADAMS, Professor of History in Yale University. New York, Charles Scribner's Sons, 1894. — 8vo, viii, 463 pp.

One of the most serious deficiencies in the mass of modern historical literature in English is the dearth of books which present in accessible and readable form the results of the researches which have been prosecuted in Europe with extraordinary activity for the last two or three generations. In this volume Professor Adams has made a most valuable contribution to supply this want in regard to a general view of the middle ages. Covering so broad a field as it does, it is largely a comment on the movement of history; but a comment which is the outgrowth of wide study, arranged so as to be

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serviceable to the student as a guide or supplement to class work, to the teacher as an outline to be expanded and illustrated, and to the general reader as a substitute for the help of an instructor. To prepare a work of this kind requires not only sound scholarship, but also a well poised judgment and a decided pedagogical skill. It seems to me that the author has met these requirements in an uncommon degree. Certainly, it is an unusual experience to read with so little dissent a work in which judgment is expressed on so many subjects. There is no attempt at novel or hazardous generalizations, while traditional "verdicts of history" are often discussed and sometimes rejected in a way which increases the reader's confidence in the author's candor and historical insight.

Professor Adams suggestively notes the effect of the Roman legal spirit upon theology. The idea might well have been a little more fully developed and illustrated from the penitential and indulgence regulations.

He draws a sharp distinction between Christianity as a religion, the church as an organization and Christian theology as a body of doctrines, and continues:

> But neither the dogmatic system nor the ecclesiastical system of any given time or place, is Christianity. The causes which have created the one are not those which have created the other, and the one set of causes must not be held responsible for results which have followed from the other. So completely indispensable is this distinction that absolutely no trustworthy reasoning about Christian history is possible if it is lost sight of. [Pages 111–112.]

Now this is in the main true, yet it seems to me that we may easily exaggerate the practical separability of the three, or the separability of their causes and effects. Such separation is largely a philosophical or ideal process. Christian theology apart from the church or from Christian faith has even less existence than the "economic man," or perhaps about the same kind of existence. The separation is carried out in thought to facilitate scientific analysis, but historically the separation is practicable only in a limited degree. Only minds trained in analysis can do it; the overwhelming majority of Christians cannot realize to themselves a Christian who neither accepts the dogmas nor belongs to a church.

Possibly an over-emphasis of this separability has led the author to make a further statement which is misleading, if not erroneous. He says of the struggle with Gnosticism that it ended, "as the earlier strife had done, in the preservation in all essential points of the

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primitive Christianity." Again: "Notwithstanding all these attacks upon it, and additions to it from outside sources, the Christian religion had remained, until toward the middle of the third century, essentially unchanged" (pages 112, 113). It is a question of great historical interest whether profound changes in the essential content of Christianity did not take place in those first two centuries. It was the period in which an elaborate philosophy of Christianity was developed, the acceptance of which in the main became the test of Christian fellowship. In this period the primitive consciousness of individual reception of the gift of the Spirit gave place to the idea that it was rather conferred upon the church as a body, and that the individual shared in it only by being a member of the body. In this period the idea of a Christian canon develops, and the doctrine that agreement with the canonical writings is the test of truth. These, it may be said, are rather changes in dogma or organization than in the essence of Christianity, but would that not be an instance of carrying the distinction too far? In view of the hypothetical character of many of the conclusions advanced in regard to the earliest history of Christianity, it might be premature or unwise to present them in a work like the present, which deals with a later period. Yet, to convey the idea that primitive Christianity was essentially unchanged for two centuries, may be to err in the opposite direction.

In conclusion, it seems to me that Professor Adams can make teachers and students doubly his debtors by adding in a second edition much more liberal indications in regard to the literature of the various periods and subjects. In no single way can a competent scholar be of greater help to students than in guiding them to the best books. It takes a student just as long to read a poor book as it does to read a good one. Professor Adams has apparently desired to avoid any display of reading, but a bibliographical guide can be easily relegated to an appendix. For example, it would be a great boon to many teachers to have their attention called to Lavisse and Rambaud's *Histoire Générale de l'Europe du IV^e^ Siècle*, as a work of preëminent usefulness. Again, Beard's *Martin Luther* is a work of conspicuous excellence as an introduction to the Reformation, although it seems to be little known. No fault is to be found with the references Professor Adams does give; they are well chosen and to the point. Yet, as a teacher and student, I should have been grateful for ten times as many.

EDWARD G. BOURNE.

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Sam Houston and the War of Independence in Texas. By ALFRED M. WILLIAMS. Boston and New York, Houghton, Mifflin & Co., 1893. — 405 pp.

Political writers of the thirties and forties were not discriminating biographers. Party bias warped their view of the characters of men identified with a cause that the authors championed or opposed, and Houston's biographies, written for the most part during this period of strong party feeling, offer no exception to the general rule. To steer between Abolitionist bitterness and crude Southern hero-worship has been the aim of the present author, and he has undoubtedly succeeded in giving us a fairer and more complete account than any hitherto published.

The first five chapters of the book are a straightforward and concise narrative of Houston's life till the time of his emigration to Texas, including his brief military record, his political career in Kentucky, and his sudden withdrawal from his friends to live among the Cherokees. The charges of personal dishonesty made against Houston when, after exposing the frauds of certain swindling Indian agents, he bid for the contract of supplying the tribe at what was considered an exorbitant price, are dismissed by the author as groundless and are imputed to the malice of the Indian ring. Yet these accusations have been often repeated, and are thought worthy of mention by von Holst in his *Constitutional History of the United States*. While defending Houston's uprightness in money matters, the author does not spare his obvious failings in other respects, and quotes several incidents which bear witness to an extravagant vanity and a violent temper. Houston's work in Texas is well described. His tact in dealing with the dissensions and jealousies that distracted the Texan government, his skill in overcoming the obstacles thrown in his way by the rashness and selfishness of his subordinates, and his courage and ability in the conduct of the war, receive full credit. The events of the war are told with some fullness of detail, but the vexed questions that relate to the attitude of the United States throughout this period receive but scanty treatment. The author does not lose sight of the fact that his purpose is primarily biographical, and he is not led away by the attractions of the great political and constitutional questions with which his subject is connected. While the student of constitutional history, therefore, will find in this work but little that is novel or suggestive, the reader of popular biography will find it a clear, unprejudiced and entertaining narrative.

FRANK M. COLBY.

COLUMBIA COLLEGE.

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Établissement et Révision des Constitutions en Amérique et en Europe. Par CHARLES BORGEAUD. Paris, Thorin et Fils, 1893.—vi, 419 pp.

This work was crowned with the Rossi prize by the Faculty of Law of Paris in the year 1892. It is a very painstaking and conscientious treatise upon the origin, character and development of written constitutions. While it is in most respects also impartial, it manifests at some points rather strongly the sympathy of the author for France. For example, he writes in his opening sentence: "The conception, which may be termed the French conception, of a codified public law, distinctly differentiated from ordinary legislation, is the fundamental principle of the modern state." It is rather difficult for an American to acknowledge the claim that this conception is French, since it was both taught and realized in America long before it was in France. In fact the author himself confesses, in his third sentence, that the idea of a written constitution dates from much further back than 1789 and was not born in France, and cites as the first instance of its realization the Cromwellian "Instrument." Why, then, should he begin by calling it French? I can imagine no other cause than an unscientific prejudice in favor of France.

The author distinguishes constitutions into those which have been granted, *ex parte*, from princes to subjects, those which may be regarded as compacts between princes and subjects, and those which rest solely upon the people. He undertakes to show that the movement of history is towards the last of these forms, as the democratic spirit grows stronger and more commanding. He also indicates that the movement of history is towards the exercise of the constituent power by the people immediately, instead of through their governmental representative, or even through convention delegates; and his conclusion is an argument for changing the present method of revising the French constitution by the members of the two legislative houses in joint or national assembly, to the method of the *plébiscite*. I suppose he would retain the present national assembly as the body for working out the propositions of amendment or revision, which should be subjected to the popular vote. He does not propose any direct popular initiative of such propositions.

The author is not unmindful of the disastrous experiences which France has had with the *plébiscite* in the forming, amending and revising of constitutions, but he thinks that the French people have now reached a stage of political development such as would preserve

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them against the repetition of these experiences and would secure the advantages of the *plébiscite* without any of those dangers which usually attend its employment in a crude state of political society. This seems to me a decidedly optimistic view of French conditions.

J. W. BURGESS.

The Judicial Interpretation by the United States Courts of the Act of Congress relating to the Tariff. By WILLIAM WILKINS CARR, of the Philadelphia Bar. Philadelphia, P. and J. W. Johnson & Co., 1894. — vii, 631 pp.

The main value of Mr. Carr's book is in its collection of the decisions of the United States courts upon the present tariff and customs administrative acts. The book embraces not only these decisions, but also most of the federal decisions since the formation of the Union relative to this matter of tariffs. As Mr. Carr points out in his preface,

> the decision of a court upon a tariff act does not cease to be of value after a modifying act has been enacted; and the terms of the earlier legislation and judicial decisions thereon must be considered in order to determine the Congressional intent of a later act.

Such decisions are also valuable as precedents in cases of a similar character which may come up under later acts; but apart from the later decisions, it must be confessed that Mr. Carr has contributed very little to our knowledge of the law upon the subject. Mr. Elmes's excellent work upon *The Law of the Customs* must remain still the standard treatise on this little-understood branch of the law.

The great fault of Mr. Carr's work is that it is almost entirely lacking in any attempt at classification. I know of no book upon the law that is more deficient in this particular. The work is almost impossible to read, though it is conceivable that by a judicious use of the index a person in search of precedents might find what he wishes. Chapter follows chapter without any particular reason for the sequence, while the same subject is treated here and there at haphazard in different parts of the book. In many cases it would appear as if the author's work had been little more than to take the *syllabi* of the cases to be found in the digests, and insert them in the order in which he happened upon them. At the same time, the book is more useful as a digest than a digest itself, since it is special in character, and so renders the finding of a case more simple. It must be admitted, also, that it is the only work in which the new cases are to be found.

F. J. GOODNOW.

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A Treatise on Extraordinary Relief in Equity and at Law. By THOMAS CARL SPELLING. Boston, Little, Brown & Co., 1893. — Two vols., cxlv, xix, 1795 pp.

Law of Mandamus. By S. S. MERRILL, of the St. Louis Bar. Chicago, T. H. Flood & Co., 1892. — lxix, 473 pp.

A Treatise on the Law of Certiorari at Common Law and under the Statutes. By GEORGE E. HARRIS, of the Washington, D.C., Bar. Rochester, The Lawyers' Coöperative Publishing Co., 1893. — xlix, 581 pp.

Perhaps no branch of legal literature has shown so great activity within the last two years as that relating to the law of extraordinary relief. Within this period there have appeared three books upon this important subject. It would be well if as much could be said of the quality as of the number of the books which have appeared.

Mr. Spelling is already known to the legal profession as the author of a treatise on the *Law of Private Corporations.* What strikes the reader at first on opening his latest work is the fact that a single treatise should undertake to deal with such distinct subjects as extraordinary relief in equity, and extraordinary relief at law. Still, this arrangement enables the student of the law to have at his command, in the compass of a single work, the general principles, together with the cases upon which they are based, relating to one of the most important subjects in the whole domain of public law, namely, the remedies which the law offers to the individual against the unwarranted and illegal action of the officers of the administration.

On the other hand, it is very unsatisfactory to find so general a title as "extraordinary relief" chosen for a book which, on the equity side, treats only of the bill of injunction. While equitable relief and what are usually known as extraordinary legal remedies have enough in common, certainly in so far as they are directed towards officers of the government, to admit of their being properly treated in a single volume, it is certainly very questionable whether "extraordinary relief in equity" is a proper title for a monograph on the injunction. Almost all the equitable remedies are to be regarded as extraordinary; and while, as the author says in his preface, the injunction is by far the most important of these, at the same time, the others must certainly be regarded as extraordinary in the sense in which that term is used in the book before us,

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namely, as remedies which may not be made use of where the ordinary legal remedies open to the individual are adequate.

No such criticism, however, is to be made of the second part of the work, which is devoted to the extraordinary legal remedies. In this are treated with great fullness the important writs of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*. This is a complete list of the extraordinary legal remedies which the individual has most frequently occasion to use. Moreover, as to the writ of *certiorari* the book contains the first satisfactory treatment which has ever been laid before the public. In the excellent work of Mr. High on *Extraordinary Legal Remedies*, which was, up to the time of the appearance of the work before us, the best book on the subject, the writ of *certiorari* was conspicuous by its absence. Mr. Harris's work on the *Law of Certiorari*, noticed below, contains so many of the faults of the ordinary legal treatise that it cannot be compared, in any way, with what is presented in Mr. Spelling's volumes on the same subject. Indeed, as a whole, the latter work is much more thoroughly thought out than is the ordinary legal treatise, and the cases, though presented in great numbers, seem generally to be chosen with discrimination.

At the same time, it is to be noticed that Mr. Spelling has a bad habit of stating a principle of law too absolutely, and of leaving the reader unaware of the decisions which limit the principle until they are referred to and considered in other portions of the work. Thus on page 1202 he says:

> *Mandamus* lies to federal officers below the President to compel the performance of mere ministerial duties, clearly imposed by act of Congress, to the same extent and subject to the same limitations as in the case of state officers charged with the performance of ministerial functions. The general jurisdiction is vested in circuit and district courts.

While on page 1112 we find:

> The principle was early recognized in the federal courts that the writ can only be granted in aid of an existing jurisdiction, and in cases where its employment is necessary to the exercise of powers already conferred by law. Undoubtedly Congress may confer upon the circuit and district courts of the United States original jurisdiction to issue writs of *mandamus*, but such power has never yet been conferred, and the jurisdiction of these courts is strictly limited in the use of this extraordinary remedy to cases in which it is necessary in aid of jurisdiction already acquired.

As every one knows, the latter is the correct statement of the rule of law as to the jurisdiction of the circuit and district courts of

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the United States. The first statement Mr. Spelling endeavors to support by the citation of the case *In re* Vintschger, 50 Federal Reporter, 459, which holds, however, directly the contrary, namely, that the circuit courts may not issue the *mandamus* except in aid of an already acquired jurisdiction.

Again, in discussing the writ of *quo warranto*, he says, on page 1466, that an information will not "lie against a municipal officer for the purpose of testing the legality of the charter [of a corporation], since the courts will not permit a charter to be declared invalid in a collateral proceeding to which the corporation is not a party." No qualification is made of the rule, and no citation is made of cases in support of it. But on the very next page we find a statement that *quo warranto* is a proper remedy, when used against town officers for usurping franchises on the ground that the organization of an alleged township is invalid; while on page 1534 it is said, citing People *vs.* Carpenter, 24 N.Y., 86: "The question of the legal existence of a town in a proceeding involving a town office, and the consequent legal existence of the office, may be properly raised and decided." Of course, both these statements are in a way true; but at the same time it would seem as if it were the function of the text-book writer to reconcile them, or at least to state the rule to be deduced from them in such a way as to avoid contradictions.

Finally, while we do not expect in a law book the best literary style, we have a right to object to such expressions as those to be found on pages 946, 947, where it is said that much judicial learning and text-book discussion have been "obsoleted" by the passage of a particular statute, and that it would not be possible to "synopsize" the judicial learning growing out of certain complicated questions.

But, apart from these defects, which are very largely of form rather than of substance, Mr. Spelling has done a great service for the profession by the writing of these volumes; for, in general, the subject matter is stated with clearness and precision, and the cases which he has collected seem to be in large measure new, or such at any rate as have not received great attention from former writers upon the same subject. One point of excellence in particular should not be omitted in any mention of the work, namely, the references which are so continually made to such collections of decisions as the *American Decisions* and the *American Reports*, and also to the collections contained in the "Reporter" system.

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The work of Mr. Merrill is confined to a single one of the means of extraordinary relief at law, namely, the writ of *mandamus*. The author devotes considerable space in the initial chapters to the definition and history of the writ, and to such general subjects as its scope in respect to public rights and public officers, and the general principles which govern its issue. In subsequent chapters he treats of the discretion of the court in issuing the writ, and then goes on to speak of the special applications of the writ, as, for example, its issue against the state, against the executive and legislative officers of the government, and in such special matters as public corporations, private corporations and canvassers of elections and courts. Later on he considers what courts may issue the writ, and treats of the relations between the federal and commonwealth courts and officers as to the issue of the writ, of parties to *mandamus* proceedings, and of the pleadings and practice in such proceedings.

The book, as a whole, is systematically arranged and well written. It is of particular interest to the practitioner and the student of these subjects, in that it calls attention to the later cases, and analyzes a good many cases which have not received sufficient attention in earlier works. Beyond this, however, it has not materially advanced our knowledge of the subject, and it does not seem likely to displace the excellent work of Mr. High from the position of preëminence so far as he has treated of *mandamus*.

It is not possible to speak as well of Mr. Harris's work on the *Law of Certiorari*. Mr. Harris had one of the most favorable opportunities which an author could desire. There was no separate treatise upon his subject, and of late years, with the demand for a more extensive judicial control over the acts of administrative officers, that subject has assumed great importance. Hitherto, all that could be found upon the writ of *certiorari* was contained in various digests of the law and works upon practice. No one had attempted to treat even cursorily, except in this way, of the complicated questions which arise in connection with this writ. Such an opportunity does not often fall to the lot of a legal writer at the present time; but Mr. Harris has not utilized it as one might reasonably have wished. While, in the present state of the law upon the subject, it would not perhaps be fair to demand of the first man to attempt its systematic treatment a completely successful and satisfactory treatise, still one who places before the public a work upon so important a topic ought to have devoted sufficient

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time and intelligence to the matter to have made his work, at any rate, a step in advance. Mr. Harris, however, has done little more than take from the digests in which the cases have been collected, the various summaries of the decisions, and put them in an order hardly less available for the reader than that in the digests themselves. There are few books in which the logical connection between the sections, and even in many cases between the paragraphs, is more difficult to find. Thus, under "Municipal Corporations," we find such irrelevant matters as the issue of a *certiorari* in the case of the assignment of a certificate of membership in a cotton exchange; in the case of a receiver appointed for a bank by one of the state courts; to review an order of a state superintendent of education; to review the revocation of the certificate of a pharmacist; and to vacate the resolution of church trustees in regard to a church pew. Again, in the chapter on the assessment of taxes, we find cases of the issue of the writ to quash a conviction; on suggestion of diminution; to review an order abating a nuisance; to review the revocation of an excise license, *etc.*, *etc.* It would be tedious to enumerate all the instances of illogical treatment and faulty classification. It is useless to attempt to read the book through. The mind becomes bewildered with the multitude of unconnected facts which it is forced to consider.

In the portion of the book which purports to be devoted to general principles, it is difficult to find much more than a disconnected statement of particular applications of the writ. The author seems to have failed completely to grasp the fact that originally the writ of *certiorari* was issued merely to bodies not acting in accordance with the common law. An understanding of this is necessary to a complete understanding of the writ, and to distinguish it from the writ of error. It is needless to say that the work does not notice in any way the development which has been going on in the application of the writ of late years in this country. Such a book as this is really discouraging to those who are hoping for a scientific treatment of the law.

F. J. GOODNOW.

De la Liberté Politique dans l'État Moderne. Par ARTHUR DESJARDINS. Paris, E. Plon, Nourrit et Cie., 1894. — xv, 365 pp.

This is in my judgment one of the most remarkable books which has appeared in the French literature of political science during the last half century. In fact, it is in spirit rather English or American

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than French. The clear distinction between civil liberty and political liberty; the accurate and exhaustive definition of civil liberty; and the well considered appreciation of political liberty, as the totality of the means enjoyed by the citizen for the protection of his civil liberty — are all English-American in principle. If the author can only lead French thought upon this vital subject, it will not be a decade before the French constitution will contain a "bill of rights," and will provide for an independent judiciary to interpret and apply its provisions in behalf of the individual against the tyranny and paternalism of government.

The author has not written his words of wisdom any too soon. The reform which he indicates is, it seems to me, an absolute necessity to the permanence of republican government in France. The French system is rapidly degenerating into the despotism of the Chamber of Deputies. Without a well established, well understood, constitutional civil liberty, under the protection of an independent judiciary, the rapid changes in ministries, each outbidding its predecessor in the radical nature of its program, must before long produce such a feeling of insecurity as will cause a revulsion of sentiment against republican institutions. It is from this point of view that the work of M. Desjardins appears to me to be full of sage advice to his countrymen.

The last part of the last chapter of the work is devoted to a most wholesome exposition and criticism of the weaknesses of French political character. The author makes these to consist, first, in over-hastiness, which degenerates easily into recklessness, and manifests itself by a rough-shod gallop over existing rights, conditions and relations towards an abstract ideal; second, in fickleness, which causes the abandonment of any fixed line of policy before sufficient experience has been made with it to test its value; and third, in national conceit, which produces an under-estimate of the contributions of other countries to civilization, and tends to fill the minds of Frenchmen with the harmful fancy not only that France leads the world, but that France is the world.

The criticism is both just and friendly, and the purpose of it is most patriotic and necessary; for unless the French shall cure themselves of these weaknesses, it is almost certain that they will never arrive at that system of civil liberty which renders the permanence of republican institutions possible and reasonably probable.

J. W. BURGESS.

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RECORD OF POLITICAL EVENTS.

[From November 6, 1893, to May 10, 1894.]

I. THE UNITED STATES.

I. National Affairs.

FOREIGN RELATIONS. — The revelation, development and failure of **the administration's Hawaiian policy** has excited most attention in this field. Mr. Blount presented to the secretary of state, under date of July 17, a voluminous report on the revolution in Hawaii, covering in great detail the political and social condition of the islands. The particular events of January, 1893, through which the monarchy was overthrown, he represented as the result of a well-managed conspiracy, in which a small number of aliens and citizens of foreign extraction, chiefly Americans, took advantage of the queen's ill-advised and unsuccessful attempt at changing the constitution, to effect a revolution, with the purpose of bringing about the annexation of the islands to the United States. This plan was devised under assurances secured from the United States minister, Mr. Stevens, that he would recognize any government they might form and would land troops "for the purpose of protecting life and property." The recognition was given and the troops were landed, the report held, before the provisional government had in any way demonstrated its ability to maintain itself against the queen's forces, and the presence and location of the American troops operated to prevent the royalists from attacking the revolutionists. The queen's submission was due to representations that an armed contest would have to be against the United States. Mr. Blount's report embodied by implication a severe arraignment of Mr. Stevens's conduct throughout the affair. On the basis of the evidence contained in this report, Secretary Gresham made his own report to the president under date of October 18. He reached the conclusion that the provisional government owed its establishment and its continued existence to the Hawaiians' belief that an effort to overthrow it would bring them in conflict with the arms of the United States; and further, that the majority of the voting population of the islands earnestly desired the restoration and independence of the royal government. The secretary therefore recommended that the treaty of annexation should not be resubmitted to the Senate, and suggested that the abuse of the authority of the United States could only be undone by the restoration of the legitimate government in Hawaii. Under the same date with this report, Secretary Gresham sent special instructions to Mr. Willis, who had succeeded Mr. Blount as minister to Hawaii, directing him to inform the

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queen that the treaty of annexation would be dropped, and to express to her the president's regret that "the reprehensible conduct of the American minister and the unauthorized presence on land of a military force of the United States obliged her to surrender her sovereignty for the time being and rely on the justice of this government to undo the flagrant wrong." The minister was instructed then to secure from the queen a pledge that, when reinstated, she would grant full amnesty to all who participated in the revolution and would assume all obligations created by the provisional government. Having obtained this promise, he was to notify the provisional government that they were expected to relinquish to the queen her constitutional authority. Mr. Willis presented his credentials to the provisional government November 7, and was duly received. On the 13th he opened communications with the queen, but was met with a stout refusal on her part to make the pledge of amnesty demanded as conditional to her restoration. She insisted that she had no power to prevent the operation of the law, which directed that "such persons should be beheaded and their property confiscated." This attitude having been reported to Washington, President Cleveland, on December 18, sent to Congress, with the documents, a message reviewing the whole matter, maintaining the moral necessity of the attempt to undo the wrong which he held was committed by Minister Stevens, asserting as equally binding a moral necessity for requiring that amnesty should accompany the queen's restoration, and admitting that the queen's refusal to accept the conditions imposed, together with "unfortunate public misrepresentations of the situation and exaggerated statements of the sentiments of our people," had injured the prospects of successful executive mediation. He therefore commended the matter to the attention of Congress, and promised coöperation in any plan "which is consistent with American honor, integrity and morality." In the meantime, Minister Willis, continuing negotiations with the queen, succeeded in securing the required pledges on the very day on which the president sent his message to Congress. On the following day the minister made the formal announcement to the provisional government that it was expected to turn over its power to the queen, and asked categorically whether it was willing to abide by the decision of the president. On the 23d the provisional government, through its minister for foreign affairs, Mr. Dole, made its reply. Accepting with regret President Cleveland's decision against annexation, the provisional government declined to believe that the project of political union was rendered hopeless for all time. As to the demand that it relinquish its power to the ex-queen, the government declined absolutely to recognize the right of the President of the United States to interfere in the domestic affairs of Hawaii. The only basis for the claim to such a right seemed to be found in the terms of the queen's submission in January, 1893, which were construed as referring the question of the sovereignty in Hawaii to the President of the United States. But such construction had never been in any way sanctioned by the provisional government, while the

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United States had been committed to a recognition of that government by all the ordinary incidents of international procedure: by the formal recognition by Mr. Stevens; by negotiating a treaty with its commissioners; by receiving its minister; and by accrediting to it two different ministers. However valid the queen's protest might be as against the acts of the revolutionists, in influencing the judgment and policy of the people of Hawaii; or as against the acts of Minister Stevens, in giving a basis for action by the United States in its own exclusive sphere; it could give no foundation for an interference by either power in the concerns of the other. After complaining and protesting at length in reference to the course of Mr. Blount while in Hawaii, and of the Cleveland administration's policy in general, the reply concluded with the statement: "The provisional government of the Hawaiian Islands respectfully and unhesitatingly declines to entertain the proposition . . . that it should surrender its authority to the ex-queen." On receipt of this reply Secretary Gresham instructed Mr. Willis that the president's view of his duty in connection with the illegal acts of American diplomatists and naval commanders was different from that of the provisional government, and that such acts required the president to disavow the officials and, "within the limits of his constitutional power," to undo their work. As, however, the whole matter had been referred to the wider powers of Congress, the minister was directed to consider his special instructions in the affair fully complied with. During November and December, while Minister Willis's negotiations with the queen were in progress, but before their exact character was known, much excitement prevailed in Hawaii, and the provisional government and its adherents expected an attempt to restore the queen by force. The possibility of such a course was widely discussed in the United States, and was the basis of violent attacks on the administration in the press. As finally made public, the instructions to Mr. Willis were found to embody a declaration that the president could not employ force, either to restore or to maintain the queen's authority, save with the authority of Congress. Since the reply of the provisional government and the ensuing instructions to Mr. Willis, which were transmitted to Congress and made public January 13, the general diplomatic situation has remained unchanged. Steps have been taken meanwhile by the provisional government toward a constitutional convention to put the organization on a permanent basis. — Early in April, substantially identical bills were passed by Congress and by the British Parliament for putting into effect the joint regulations agreed upon by the court of arbitration for the protection of the Behring Sea seals (see last RECORD, p. 770). On May 9, the Senate ratified a treaty with Russia by which substantially the same regulations were established for Russian and American sealing interests as had just before been put in force by Great Britain and the United States. — Though the registration of Chinese in the United States proceeded satisfactorily under the new law noticed in the last RECORD, the desirability of having the subject

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regulated by international agreement led to the negotiation of a **treaty with China**, under date of March 17, which was reported by the committee on foreign relations to the Senate, March 28, without amendment. The treaty provides for the prohibition of the entrance of Chinese laborers into the United States except in the following cases: (1) A laborer registered under the laws of the United States may, on going out of the country, by giving a written description of his family or property or debts, obtain a certificate which shall entitle him to return within a year; (2) the privilege of transit across the territory of the United States is assured to Chinese laborers, under proper regulations to prevent abuse. Chinese officials, teachers, students, merchants or travelers, who are not laborers, are not affected by the exclusion. The Chinese government agrees to the enforcement of the registration acts in the United States, and the United States recognizes the right of China to enact corresponding laws in reference to American laborers in China. The treaty is to run for ten years. — The disturbed condition of affairs in **Central America** has given rise to several minor diplomatic incidents. An American mail steamer, whose captain refused to give up a passenger at the demand of the authorities in a port of Honduras, was fired upon, November 6, by the military, though without damage. A demand for reparation brought a prompt apology from the government of Honduras, and a disavowal of its officers' acts. More interest was excited by incidents on the Mosquito Coast of Nicaragua. In connection with the war with Honduras (*infra*, p. 376), a Nicaraguan force took possession of Bluefields, the chief town of the Mosquito reservation. Some friction arose between the Nicaraguans and the Mosquito authorities, the latter claiming local autonomy under a treaty of 1860 between Great Britain and Nicaragua. On its way to Bluefields, where American interests are important, the United States corvette *Kearsarge* was wrecked on Roncador Reef, and a British war vessel, having reached the town, landed a force for a time and maintained order. To questions put by the United States, the British government replied that the purpose of this action was solely the security of life and property for foreigners, and that no protectorate over the Mosquito Indians was desired or intended. Bluefields is about 100 miles north of Greytown, the terminus of the Nicaragua Canal, and falls under the provisions of the Clayton-Bulwer Treaty of 1850. During April considerable friction was reported between the Nicaraguans and the American residents, and a man-of-war was kept in the vicinity.

INTERNAL ADMINISTRATION. — The report of the secretary of the treasury, transmitted to Congress December 20, opened with an estimate that the year ending June 30, 1894, would show a deficit of $28,000,000. To meet this situation he suggested various measures, apart from the recasting of the revenue system. Regarding it as undesirable to use the power already existing to put out high-rate and long-term securities, he asked for authority to issue a three per cent bond, redeemable

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in five years, and recommended that the denominations be low, so as to enlist the interest of the masses of the people, and that the bonds be disposed of through sub-treasuries and post offices, so as to save commissions. Another suggestion for meeting the emergency was the issue of a three per cent one-year bond, to be sold or paid out to government creditors at par. Mr. Carlisle described the decrease in the gold reserve for greenback redemption, and dwelt upon the necessity of some scheme which should enable him to keep up that reserve, as well as to pay the current expenses of the government. While endorsing the principles of the tariff bill pending in the House of Representatives, he thought it would bring a revenue some $50,000,000 less than what would be necessary, and to meet this deficit he advocated an increase of the tax on distilled spirits, and the imposition of new taxes on cigars and cigarettes, cosmetics, perfumeries, legacies and successions, and incomes from investments in corporate securities. — From the beginning of the period under review the condition of the treasury, which the secretary's report showed to be so bad, grew worse and worse. Expenditures ran steadily far ahead of receipts, and the balances on hand, both of gold and of currency, tended rapidly to extinction. On January 13, Secretary Carlisle submitted to the finance committee of the Senate a statement showing that the excess of expenditures over receipts to that date had reached $43,000,000, and that at the same rate the deficit for the year would be $78,000,000, or nearly three times what he had estimated in his report in December. The gold reserve was down to $74,000,000, and the secretary declared that the ordinary expenses of the government would soon have to be paid wholly out of that fund. Unless something were promptly done by Congress to authorize the issue of low-rate bonds, he announced that he would put forth high-rate bonds under the power granted by the Resumption Act of 1875. No steps having been taken by Congress, on January 17 the secretary announced **a bond issue of $50,000,000.** The bonds were to be redeemable after ten years, and to bear five per cent interest, payable in coin. No bid would be accepted lower than 117.223, the equivalent of a three per cent bond at par. The Treasury's policy was immediately antagonized by the silver party, who wanted the financial emergency tided over by the coinage of the seigniorage (see below, p. 353). The House judiciary committee adopted a resolution denying the power claimed by the secretary to use the proceeds of the bonds for paying the current expenses of the government, and under the auspices of the Knights of Labor a suit was brought for an injunction to restrain the secretary from issuing the bonds. Financiers found fault with the method of the issue, and claimed that there was absolutely no chance for profit under the terms imposed. On the last day of the term allowed for bids, however, the New York bankers, after several consultations with Mr. Carlisle, decided to sustain him, and subscribed for some $45,000,000. The subscription terminated February 1, and the total amount called for was about $58,000,000. The treasury gold balance, meanwhile, had run down to $65,500,000, but the pro-

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ceeds of the bonds contributed to raise it well above the $100,000,000 mark. In April, however, a foreign demand for gold set in, and by the close of this RECORD the surplus over this sum had again about disappeared. — The work of **the pension bureau** in weeding out irregularities has been continued on the lines described in the last RECORD. A number of additional frauds were discovered, and prosecutions of offending agents were instituted. A provision attached to a deficiency appropriation bill passed in December forbade the suspension of a pension pending an investigation of the right to the pension or of fraud in obtaining it. The commissioner accordingly ceased the practice, though, on the advice of the attorney-general, he refused to remove the suspensions pending at the passage of the act. In replying to a resolution of Congress touching this matter, the commissioner took strong ground against the claim that a pension is a "vested right," and held that it is only a bounty, subject to the will of the donor. — The Department of the Navy was called upon in the fall to deal with evidence of illegal practices by the employees of the contractors who were engaged in the production of armor plates for the government. Plates of less than the best quality were found to have been imposed upon the inspectors, though none that were under the lowest limit of tolerance specified in the contract. After careful investigation the secretary of the navy, while absolving the members of the contracting company from knowledge of the frauds, decided, nevertheless, that damages must be paid to the government, and, on appeal to the president, the decision was affirmed, though the amount of the assessment was reduced. The company, accordingly, on January 17, paid to the treasury under the decision $140,484.94. Reports of further frauds were circulated later, and are under investigation at the close of this RECORD. — In connection with **the civil service**, the course of the administration has continued to excite serious criticism from the advocates of reform. Particularly hostile comment was excited by the Van Alen case. Mr. J. J. Van Alen was nominated as Minister to Italy, and was confirmed at the end of October. As it became known that Mr. Van Alen had been a large contributor to the campaign fund in the last election, it was charged that his nomination involved practically the sale of the office. On November 20, Mr. Van Alen addressed to the secretary of state a letter declining the appointment. He acknowledged his gratification at the honor done him, declared that his financial assistance in the campaign had been due to a profound conviction that the success of the party was necessary to the country's good, and that the contribution had never been regarded by him as creating an obligation, and confessed his inability to see that it was less patriotic to aid a cause in which one believed by money than with voice or pen. But as the criticism of his appointment had put him in a false position, and as acceptance would bring undeserved rebuke upon the administration, he felt bound to decline. The president urged him to reconsider, but in vain, and the place was filled by the appointment of Wayne McVeagh, of Pennsylvania. — The Civil Service Commission was remodeled

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by the removal, November 29, of Mr. Johnson, of Louisiana, who declined a request to resign, and the appointment, as his successor, of John R. Procter, of Kentucky. The nomination to fill the vacancy in the United States Supreme Court led to a **conflict between the president and Senator Hill**, of New York. Mr. W. B. Hornblower, a New York lawyer belonging to the faction of the Democratic Party opposed to Senator Hill, was nominated for the justiceship in the autumn, but on January 15 the Senate adopted, by 30 to 24, a resolution of the judiciary committee rejecting the nomination. Eighteen Democrats voted with the minority and twelve with the majority. Lack of reputation and experience were alleged as grounds for voting against Mr. Hornblower, though Senator Hill made much of the fact that the president had not consulted him about the nomination, and thus appealed to the custom of "senatorial courtesy." On the 22d of January the name of Wheeler H. Peckham was sent in for the justiceship. Mr. Peckham's reputation and experience were greater than those of the former nominee, but his political attitude toward Senator Hill was even more antagonistic, and the senator was consulted in his case no more than in the other. A sharp struggle between the factions in the Senate ended in the rejection of the nomination, February 16, by 41 to 32, with 15 Democrats in the majority and 23 in the minority. The president then, giving up the attempt to appoint a New York man, on the 19th sent in the name of Senator White, of Louisiana, who was immediately confirmed. Other appointments during the period were as follows: Assistant Secretary of War, Joseph E. Doe, of Wisconsin; Assistant Secretary of Agriculture, C. W. Dabney, Jr., of Tennessee; Minister to Bolivia, Thomas Moonlight, of Kansas; Minister to Sweden and Norway, T. B. Ferguson, of Maryland.

CONGRESS. — The first regular session of the fifty-third Congress began December 4, just a month after the end of the extraordinary session. **The president's message** contained no points of especial interest in respect to foreign relations, the Hawaiian matter being relegated for discussion to a promised special message. On the currency question Mr. Cleveland expressed his satisfaction at the action of Congress in the special session, and his conviction that no further action should be taken until financial and commercial conditions became more settled and the effects of the new law were fully revealed. He announced that, having no definite proposition ready for submission to the monetary conference, which was to have reassembled November 30, he had agreed to a further postponement. In respect to the Postal Department, the president referred to the growing deficit, which was estimated at eight millions for the current year, and suggested a curtailment of the matter carried free, and a relinquishment of the policy of extending the free-delivery system. The condition of the treasury was made the ground also for the suggestion of caution in further appropriations for the new navy. Pension frauds were vigorously denounced, and the president protested that "those who attempt in the line of duty to rectify these wrongs should not be accused of enmity or indifference to the

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claims of honest veterans." The message contained an earnest denunciation of the abuses of the free distribution of seeds through the Agricultural Department. During the last fiscal year there were sent out enough cabbage seed to plant 19,200 acres, enough beans to plant 4000 acres, enough sweet corn to plant 7800 acres, *etc.*, *etc.* To stop this abuse it was recommended that the appropriation be reduced from $135,000 to $35,000. The message presented a strong endorsement of the work of the Civil Service Commission, and concluded with an earnest plea for tariff reform in the direction of free raw materials, with a small tax on corporate incomes. — The primary work of Congress was in connection with the Tariff Bill, the progress of which is described under a separate head. While this was engaging the attention of the House, the Senate took up the bill for the **repeal of the Federal Election Laws**, and passed it, February 7, by 39 to 28, substantially a party vote. By the signature of the president on the following day, this relic of Reconstruction was removed from the statute-book. Following this came a lively struggle over the **Seigniorage Bill.** This measure, introduced in the House by Mr. Bland, provided for the immediate coinage of silver in the treasury to an amount equal to the difference between the cost and the coin value of the bullion purchased under the Sherman Act, which difference amounted to about $55,000,000. The bill provided that certificates should be issued on this seigniorage as fast as coined, or faster, if the needs of the treasury required. A second section directed that, after the seigniorage was disposed of, the remaining bullion in the treasury should be coined, and the treasury notes based on it should be redeemed and replaced by silver certificates. This bill was passed in the House, March 1, by 168 to 129, the majority consisting of Democrats and Populists, with 19 Southern and Western Republicans; the minority, of Republicans, with 49 Eastern Democrats. In the Senate the friends of the bill took parliamentary advantage of a little carelessness on the part of its adversaries to cut off the long debate that was expected, and on March 15 the bill passed by 44 to 31, ten Republicans for, and nine Democrats against it. On the 29th President Cleveland vetoed the bill. His general position was that of favor to the idea of coining the seigniorage, but of hostility to this particular bill, and especially to the second section, which went beyond this simple idea. He objected to the phraseology of the bill, which was in places ambiguous, but found a wider ground for his veto in the belief that "sound finance does not commend a further infusion of silver into our currency at this time, unaccompanied by further adequate provision for the maintenance in our treasury of a safe gold reserve." As to the second section, he considered ill-advised and dangerous the scheme by which it was proposed to replace legal-tender treasury-notes, redeemable in either gold or silver, by silver certificates which are not legal tender, and are redeemable only in silver. Such a proceeding, he held, would inevitably stimulate the withdrawal of gold from the treasury, and render more difficult than ever the maintenance of parity between the metals in our currency.

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The president expressed, in conclusion, a willingness to see the seigniorage coined, if at the same time provision were made for a low-rate, short-term bond to protect the gold reserve. On the question of overriding this veto, the vote in the House, April 4, stood 144 to 115, not two-thirds in the affirmative. — The blocking of business in the House of Representatives, due to the inability of the Democrats to maintain the presence of a majority consisting of their own members, and the refusal of the Republicans present to vote, forced the Democratic caucus finally to approve in April a rule for **counting a quorum** from members present and not voting. There was great reluctance to taking this course, since the principle had been stoutly resisted by the Democrats when applied by Speaker Reed (see this QUARTERLY, V, 360). But a proposition to impose a fine for refusal to vote failed to gain much support, and there seemed no other way out of the difficulty. Accordingly the rules were amended by the House, April 17, so as to provide that members present but not voting on roll-call should be counted. In distinction from the Reed rule, however, the responsibility of making the list is devolved on two tellers, and not on the speaker.

THE TARIFF. — The Democratic members of the House committee on ways and means began during the special session (see last RECORD) the preparation of a tariff bill. The outcome of their labors was **the Wilson Bill**, which was laid before the whole committee and made public November 27. On the previous day the sugar schedule was given out, in order to terminate the manipulation of the stock market through false reports as to the committee's conclusions. The characteristic features of the bill, as described in the statement of Chairman Wilson which accompanied it, were as follows: First, the adoption, wherever practicable, of *ad valorem* instead of specific duties; second, "the freeing from taxes of those great materials of industry that lie at the basis of production." Specific duties were held to be objectionable, first, as concealing the true weight of taxation, and second, as bearing unjustly on consumers of commoner articles. Free raw materials were held necessary to the stimulation of industry and the extension of foreign trade. The schedules, as reported, showed, in addition to a very extensive increase in the free list, reductions in rates, as compared with the McKinley Bill, on all but a small number of items. The important additions to the free list included iron ore, lumber, coal and wool. Raw sugar was left free, as in the existing law, but the rate on refined sugar was reduced from one-half to one-fourth of a cent per pound, and the bounty was repealed one-eighth per annum until extinguished. Some amendments were made in the administrative provisions of the tariff law, designed to soften, as the committee said, features of the McKinley Bill "that would treat the business of importing as an outlawry, not entitled to the protection of the government." It was estimated that the reduction of revenue effected would be about $50,000,000, and the committee set to work on an internal revenue bill to make good this deficiency. On January 8 Mr. Wilson brought up **the bill in the House**, and debate began under a

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rule calling for a vote on the 29th. During the consideration in committee a number of changes were made in the schedules, the most important being in respect to sugar, where the duty was taken off refined sugars, and the repeal of the bounty was made immediate instead of gradual. A clause was inserted, also, specifically repealing the reciprocity provision of the McKinley Act. The greatest general interest was excited, however, by the progress of the internal revenue bill, the chief feature of which was a **proposition for an income tax**. The bill, after formulation by the Democratic members of the ways and means committee, was brought before the full committee January 22. Besides the income tax, the measure provided for a stamp duty on playing cards, and raised the excise on distilled spirits to one dollar per gallon. As to incomes, the committee's bill, contrary to an intimation in President Cleveland's message (see above), affected individuals directly as well as corporations. As to individuals, it imposed a tax of two per cent on all incomes so far as they were in excess of $4,000, after allowing deductions for taxes, losses not covered by insurance and bad debts. Declarations of income were required from all persons having over $3,500, under heavy penalties for neglect, refusal or fraud in the matter. As to corporations, the same rate was levied on all interest on bonds, and on all dividends and all surplus income above dividends, excepting premiums returned to policy holders by mutual life insurance companies, interest to depositors in savings banks, and dividends of building loan associations. Corporations were required to make regular returns as to the condition of their business, and to allow inspection of their books by revenue officers. The income-tax measure was immediately and very vigorously antagonized by a considerable number of Eastern Democrats, headed by the New York Congressmen. It was adopted by the ways and means committee mainly through Southern and Western votes. On the 24th of January it was reported to the House. A Democratic caucus on the following day resolved by a small majority, against the wish of Mr. Wilson, to attach the measure to the Tariff Bill. Accordingly, the rule regulating the debate was modified to allow discussion of the amendment. The final votes were then taken on February 1. The internal revenue bill was added to the Wilson Bill by 182 to 50, 44 Democrats voting in the minority and most of the Republicans not voting. The measure as amended was then adopted by 204 to 140, 16 Democrats and one Populist going with the Republicans in the negative. In the hands of the Senate finance committee the bill underwent a thorough revision, differences of opinion in the Democratic majority leading to a careful discussion of the measure in a party caucus. The measure as amended was laid before the full committee March 8, and was introduced **in the Senate** on the 20th. Changes in details were very numerous. The most important consisted in taking sugar, iron ore and coal off the free list and subjecting each to a small duty. Debate on the bill was opened April 2. It was soon discovered, however, that many Democratic senators were seriously

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dissatisfied with the schedules affecting the industries of their respective states, and at the end of April there was a lull in the debate while the factions of the majority adjusted their differences. A scheme of changes was finally agreed to in caucus on May 3, and laid before the Senate by the finance committee on the 8th. The most important features were a new sugar schedule, which had given great trouble, and very numerous changes from *ad valorem* to specific duties, with a net increase in rates.

THE FEDERAL JUDICIARY. — The supreme court, November 6, 1893, reversed a decree of the territorial court of Utah prescribing the application of the confiscated Mormon Church property to certain charitable and religious purposes. As Congress had, since the decree, enacted a law directing the restoration of the property to the Mormon Church, the court ordered action in accordance with this law. On December 18, in the case *In re* Swan, the court held that the South Carolina Dispensary Act did not authorize the search for and seizure of liquors without a warrant, and refused to release on *habeas corpus* a constable who had been committed for contempt for so seizing certain liquor in the possession of a railway which was in the hands of a federal receiver. At the end of February, the United States district court at Chicago, in United States *vs.* James, *et al.*, decided that the recent act of Congress requiring witnesses to testify before the Interstate Commerce Commission, with the guarantee of immunity from prosecution based on their own statements (see this QUARTERLY, VIII, 378), was void as conflicting with the fourth and fifth amendments to the constitution.

II. AFFAIRS IN THE STATES.

THE ELECTIONS. — The voting for state officers in November showed quite generally a pronounced reaction against the Democratic successes of the previous year. In New York and New Jersey the Republicans wrested control of the legislatures from their opponents, and in Massachusetts and Iowa, displaced Democratic governors. **Incidents of special interest** were as follows: Mr. McKinley, for governor of Ohio, secured a plurality of 80,000 over Mr. Neal, whose free-trade convictions were as conspicuous a feature in the campaign as the protectionist opinions of his opponent. In New York, Mr. Maynard, the Democratic candidate for judge of the court of appeals, was antagonized by the Cleveland faction of the party, on the ground of alleged unscrupulous methods in support of the Hill faction's projects in previous elections. All the Democratic candidates for state offices were defeated, but Maynard ran 44,000 votes behind the ticket. In Gravesend, a suburb of Brooklyn, the political organization headed by John Y. McKane resorted to very high-handed measures to prevent its opponents — Republicans and independent Democrats — from copying the registration lists and watching the vote. On election day no one not known to McKane or his followers was allowed to approach the polls, or even to remain in the village, and citizens armed with orders from the courts were

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treated with violence. Public sentiment expressed itself strongly both in the elections and otherwise against these proceedings, and as the regular county officials were suspected of sympathy with the offenders, the governor appointed special prosecutors, who secured the conviction, first of McKane, and then of a large number of his followers, on charges of violating the election laws. In Chicago much interest was centered in the candidacy for reëlection of Judge Gary, who presided at the trial of the Anarchists concerned in the Haymarket tragedy in 1886, and who had been severely denounced by Governor Altgeld recently, when the latter pardoned those convicted. Being refused the nomination of the Democratic organization, Judge Gary was taken up by the Republicans and reëlected by a large majority, running much ahead of his ticket. — The trend of **the spring elections**, municipal and other, was very distinctly favorable to the Republicans, showing a continuance of the reaction manifested in the fall. An election in Pennsylvania in February for congressman-at-large resulted in the choice of the Republican candidate, ex-Speaker Grow, by the unprecedented plurality of 187,000. In Rhode Island the deadlock between the two houses of the legislature on the question of choosing a governor (see last RECORD) remained unbroken after the session began in January. The regular elections, April 4, settled the matter by the choice of the Republican candidate for governor by 6000 plurality, and the return of a legislature consisting of one hundred Republicans and six Democrats. In the meantime, on November 28, the constitutional amendment providing that a plurality should elect, was ratified on a popular vote, by a large majority. — Other **constitutional amendments** voted upon during the year in the states were not important. Maryland ratified a series of changes in respect to the Baltimore judiciary. Michigan ratified four, the most important providing for an increase in the salaries of certain state officers. During the winter, however, it was discovered that the vote on this amendment had been converted into a majority in the affirmative by the most bare-faced manipulation of the returns. The secretary of state, treasurer and land commissioner, who were members of the canvassing board and at the same time beneficiaries of the amendment's adoption, were immediately removed from office and indicted. Ohio gave a majority, but not a sufficient majority, for amendments touching taxation and the arrangement of legislative districts. Washington rejected a proposition to increase the limit of state indebtedness.

VARIOUS LEGISLATION. — The matter of **woman suffrage** has been up for action in some form in a number of the states. In Colorado an act granting the suffrage to women was submitted, under a constitutional requirement, to the people for ratification at the election in November. The result was a majority of 6347 in favor of the act, and Colorado accordingly takes its place by the side of Wyoming as putting the sexes on an equality as to the ballot. Kansas has pending a constitutional amendment, to be submitted to the voters next November, granting full suffrage rights to women. A proposition for full woman suffrage was lost in the Iowa

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senate in February; but in April the legislature passed a law giving to women the right to vote in municipal or school elections involving an issue of bonds or an increase of taxation. In Massachusetts a bill giving women the suffrage in municipal elections passed the lower house, but was defeated in the Senate in April. The Ohio legislature passed, April 24, an act granting the suffrage to women in all school elections. In New York the court of appeals decided, January 24, that the law allowing women to vote for school commissioners was unconstitutional. — Two important judicial opinions have been rendered in respect to **the New Jersey legislature**. A decision of the supreme court, November 9, declared unconstitutional the method, followed during the last forty years, of choosing assemblymen by single election districts instead of by general ticket for the counties. This will render gerrymandering more difficult in the future. The other opinion, by the same court, settled a dispute between the Republican and the Democratic members of the newly elected state senate, which had resulted in a dual organization. Each party claimed to be the legal senate, and the one was recognized by the Democratic governor and the other by the Republican assembly. The legal point at issue was, as to whether the senate was or was not a continuous body. After a two months' blockade of legislation, the matter was brought by mutual consent before the court, and on March 21, its decision declared that the senate, though its membership changed by thirds, was not a continuous body, but required a new organization annually, in which all duly elected members were entitled to participate. This was the Republican contention, and gave them the control of the house. — The Virginia legislature passed in March a ballot-reform law on the so-called Australian principle. Virginia is the thirty-seventh state to take such action. — **The Illinois Anti-Trust Law** has been effectively employed by the state attorney-general. On the 5th of April he secured a decision in the suit against the Whiskey Trust, that that organization was illegal. And later in the month he gave an opinion that the Chicago Gas Company was also an illegal concern, and began proceedings to annul the charters of the corporations of which it is composed. He has also indicated a purpose to move against other prominent combinations of a similar character. — The enforcement of **the South Carolina Dispensary Law** in the face of a strong adverse sentiment among the people has severely tested Governor Tillman's resources. In his message to the legislature, November 28, he declared that the operation of the act had been profitable financially and morally. The constitutionality of the law was upheld by the lower state courts, but convictions for selling liquor in violation of its provisions were difficult to obtain, and the constables employed by the governor to ferret out illegal salesrooms were the objects of great antipathy. On March 30, a party of twenty-three armed constables carried out a search of private houses in the town of Darlington, where the threatening attitude of the citizens had prevented the accomplishment of the task by fewer officers. An altercation at the railway station between constables and citizens led to the use of arms in

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an affray in which two citizens and one officer were killed. The officers were put to flight by the townsmen and were hunted out of the county, with threats of lynching. In neighboring localities sympathetic mobs wrecked the dispensaries. Governor Tillman promptly proclaimed three counties in insurrection, called out the militia and took possession of the railways and telegraphs in the state. The Charleston and Columbia militia and some other companies refused to obey the governor's summons and gave up their arms, but most of the country companies turned out and occupied Darlington. No resistance was offered to the troops, and after an inquest on the victims of the affray had been held under their protection, they were withdrawn and the civil status was restored. Two constables and one citizen were held on charges of murder. On April 19 the long-awaited decision of the state supreme court was rendered, declaring the principal provisions of the Dispensary Law unconstitutional. The governor thereupon closed the state dispensaries and gave up further attempts to enforce the law, pending further action by the courts or the legislature. On May 8, the supreme court supplemented its former decision by holding that no licenses to sell liquor could be granted in the state under the existing law; so prohibition practically prevails. An underlying cause of much of the feeling on this matter has been the political animosity between the old ruling element in the state and the Populists, whom Governor Tillman represents. — The same general cause was working in the development **in Colorado**, in March, of a threatening conflict between the state executive and the Denver police authorities. Under a recent law Governor Waite removed certain members of the police and fire department boards, and appointed successors. The old members disputed the validity of his acts and secured an injunction restraining him from taking possession of their offices. As his right to remove had been sustained by the supreme court, the governor resolved to disregard the injunction, and on the 15th he called out the militia to gain the City Hall. The police were armed and preparations were made to resist the militia. While the two forces confronted each other, citizens intervened to prevent bloodshed, and the governor called upon the federal troops in the vicinity to preserve order. A detachment was brought into the city, the militia were withdrawn, and the matter was then referred to the supreme court for settlement. On the 24th the court decided that the governor was right so far as the removal of the officers was concerned, but that he was wrong in calling out the militia, instead of applying to the courts, to enforce his orders.

LABOR ORGANIZATIONS. — At the annual convention of the Knights of Labor, held at Philadelphia, November 14–28, Grand Master Workman Powderly, for fifteen years the head of the order, was succeeded by J. R. Sovereign, of Iowa. The new leader's first address to the organization, issued December 7, contained, in addition to the usual denunciation of capitalists, a strong demand for the free coinage of silver and an expansion of the currency. In accordance with the policy thus suggested

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Mr. Sovereign and other officers of the order applied, January 27, to the supreme court of the District of Columbia for an injunction to restrain Secretary Carlisle from making his proposed bond issue (see above, p. 350). The application was denied on the ground that the applicants could not show that the alleged illegal act would injuriously affect their property rights. — The Federation of Labor met in annual assembly at Chicago in December. Among other acts was the passage of a resolution approving the pardon of the Chicago Anarchists by Governor Altgeld. Overtures were received from the Knights of Labor looking to combined effort by the two organizations, along with other less extensive orders, for the purpose of improving the condition of the working classes, by political action, if necessary. — The most important **strikes of the period** have been among the railway men and the miners. A rather obstinate strike of engineers and firemen on the Lehigh Valley Railway was terminated early in December through the efforts of the New York and New Jersey state boards of arbitration. In April certain classes of employees on the Great Northern Railroad "tied up" that road from St. Paul to Seattle, and caused considerable trouble. Wages schedules and the recognition of the employees' organization were the questions at issue. An adjustment favorable to the workmen was concluded May 1 through the good offices of the business men of St. Paul and Minneapolis. Local difficulties in the mining regions of West Virginia and Colorado and among the coke makers of Pennsylvania, in March and April, were attended with conflicts between the strikers and the authorities and some loss of life. A general strike of bituminous coal miners throughout the country went into effect April 21, under the auspices of the organization known as the United Mine Workers. The object was declared to be, first, to get rid of the surplus stock of coal so as to keep up prices; second, to get a favorable arrangement with employers for future work. — Further **decisions of the federal courts** (*cf.* this QUARTERLY, VIII, 386) have cast new but rather confusing light on the national law as to strikes. Judge Jenkins, at Milwaukee, granted an injunction, December 19, restraining the officers of an employees' organization from carrying out a threat to bring about a strike on a road which was in the hands of the court. On April 6 the judge struck out the most far-reaching expressions of his order, but still insisted unflinchingly on "the right of a court of equity to restrain a strike on a railway." On the previous day, April 5, the circuit court at Omaha refused under similar circumstances to enjoin employees from striking, and held that "specific performance of a contract to render personal service cannot be enforced by injunction, by pains and penalties or by any other means."

THE UNEMPLOYED. — The business depression that continued after the panic of last summer brought into great prominence during the winter the problem of the unemployed. In all the large cities and manufacturing towns the subject engaged the attention not only of charitable private citizens but also of the authorities. Systematic organization for relief was

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effected in most places, and in many cities public works were put under construction for the purpose of giving employment. Enumerations of the unemployed were taken in a number of places by the authorities, and in most cases they gave results far below what had been estimated. A peculiar outcome of the social and political conditions of the winter was the organization of various "**armies of the unemployed**" for the purpose of marching to Washington and petitioning Congress for aid. The originator of the idea seems to have been one Coxey, of Massillon, Ohio, who took up the proposition that, as good roads and money were both much needed in the country, the government should in the existing crisis issue $500,000,000 in greenbacks, and devote it to the employment of workers in the improvement of the roads. He announced that he would lead an "Army of the Commonweal of Christ" to Washington to proclaim the wants of the people on the steps of the Capitol on May 1, and he called upon the unemployed and honest laboring classes to join him. On March 25 he set out from Massillon at the head of about a hundred men and marched by easy stages and without disorder through Ohio, Pennsylvania and Maryland, provisions being donated by the towns and villages on the way, or purchased with funds which had been subscribed by sympathizing friends. The numbers of the army increased as it advanced, and groups of volunteers set out to join it from distant states. On May 1 the detachment, numbering about 350, marched to the Capitol, but under an old District law was prevented by the police from entering the grounds. Coxey and another of the leaders, attempting to elude the police and address the assembled crowds, were arrested and were afterwards convicted of a misdemeanor. At the close of the RECORD the "army" was still encamped in Washington, with no very definite plans for the future. Somewhat earlier than the start from Massillon, another organization, "The United States Industrial Army," headed by one Frye, had started from Los Angeles, California, for Washington, with purposes similar to those of the Coxey force, though not limiting their demands to work on the roads. This force, numbering from six to eight hundred men, availed themselves of the assistance, more or less involuntary, of freight trains on the Southern Pacific Railway as far as St. Louis, from which place they continued on foot. Though observing a degree of military discipline, the various "armies" were unarmed, and the disturbances that arose in several places in the latter part of April were mostly due to the efforts of the marchers, or their friends in their behalf, to press the railroads into service for transportation. Thus a band under a leader named Kelly, starting from San Francisco, April 4, secured freight accommodations as far as Omaha by simply refusing to leave Oakland until the cars were furnished. The railroads eastward from Omaha refused absolutely to carry them, and they went into camp near Council Bluffs, in Iowa. Then sympathizing Knights of Labor seized a train by force and offered it to Kelly, who refused, however, to accept it under the circumstances, and ultimately continued on foot as far as Des Moines, in Iowa. After a long stay at

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that place, he was finally supplied with flatboats, on which, at the close of this RECORD, his band, now swollen to some 1200 men, was floating southward. A band coming east on a stolen train on the Northern Pacific, after overpowering a squad of United States marshals, was captured by a detachment of regular troops at Forsyth, Montana, April 26. Two days later the militia were called out to rescue a train from a band at Mount Sterling, Ohio. Up to May 10 a number of other more or less serious incidents on railways in the far Western states were reported, but no other detachments had reached the capital.

LYNCH LAW. — The incidents under this head seem to have been rather less numerous during the winter than they were during the preceding summer. Enough have occurred, however, to testify to a serious social demoralization. A record of cases reported in the papers for the six months under review, which makes no pretense, however, to completeness, shows thirty-six instances of lynching, exclusive of deaths in more or less formal race conflicts. All the cases were east of Colorado; twenty-six were in the South (*i.e.*, states in which slavery existed in 1860) and ten in the North. In the South all the victims were negroes, and the offense charged was in ten of the cases criminal assault on a white woman. In the North seven of the victims were white and three black, and the offense charged in most cases was murder, only two victims, and those white men, being charged with rape — in both cases on little girls. The distribution of the Northern instances among the states was as follows: Kansas, five; Ohio, two; Iowa, Illinois and Pennsylvania each one. In Mississippi, in February, the spectators at a lawful execution of a negro intervened in a way quite different from the ordinary. The rope by which the condemned was hanged having given way before he was dead, the crowd, "by unanimous vote," as the report stated, declared that further action should be postponed. In Florida, November 12, an attempt to lynch a white man who had been acquitted of murder was thwarted by the timely appearance of a company of militia.

II. FOREIGN NATIONS.

EUROPEAN INTERNATIONAL RELATIONS. — The only important development in this field has been in the further extension of the system of **commercial treaties.** Most conspicuous here was the conclusion of the Russo-German convention. Early in November the last obstacles to an agreement were removed, chiefly through the personal intervention of the Czar. The treaty was signed February 5 and, after ratification by the Reichstag (see below), went into effect March 20. By its provisions Russia secured the same favors that Germany had already accorded to other nations in recent treaties. A natural sequel to this arrangement was a *modus vivendi* between Russia and Austria-Hungary, agreed to April 2, to cover the time that must elapse before pending negotiations result in a defi-

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nite commercial treaty. Spain and France concluded, on December 30, an agreement for a year, to prevent a pending tariff war, and a treaty between Spain and Belgium was signed March 30.

THE ANARCHISTS. — Throughout the period under review Western Europe has been the scene of deadly activity on the part of these sectaries. The most terrible incident was that **in Spain**, where a bomb was exploded in the audience at the opera house of Barcelona, November 7, killing and wounding over seventy persons. Police investigations resulted in the discovery of a widespread organization of Anarchists, with foreign affiliations, to whose agency had been due all the recent disturbances in Spain. Stringent repressive measures were immediately adopted by the government for the extinction of this sort of lawlessness. The most important of the suspects arrested by the police were turned over to the military authorities, to be dealt with by court-martial. Little progress could be made in fixing guilt definitely on any individual. On January 25 an Anarchist attempted the assassination of the civil governor of Barcelona, but only inflicted a painful wound. At the opening of the Cortes in April laws were passed imposing the extremest penalties on the criminal use, or even the possession, of explosives, and on the laudation of crime in the press, and declaring illegal all Anarchist organizations. — Less destructive, but more startling, than the Spanish incidents was that **in France**, December 9, when an Anarchist named Vaillant threw a bomb from the gallery of the Chamber of Deputies, while the chamber was in session. The missile exploded before it reached the floor, and hence, while a multitude of more or less serious wounds were inflicted, no one was killed outright. Bills putting much more stringent regulations on the press and on the making of explosives were immediately brought in by the ministry and passed, and the police instituted a vigorous campaign against all suspected of Anarchistic ideas. Foreigners with such sympathies were summarily expelled from France, and natives were put under strict surveillance. On the night of December 31 a general raid on suspected houses was made throughout the country, and great quantities of Anarchist literature and explosives were seized, but no particularly important arrests seem to have been made. Vaillant was regularly tried and convicted in January and executed February 5. On the 12th an Anarchist named Henry exploded a bomb in a crowded café at the Hotel Terminus, wrecking the place and wounding more than twenty persons, of whom several afterwards died. Henry was sentenced to death April 28. Several other explosions in hotels and restaurants occurred during the following months, notably that which wrecked the Restaurant Foyot, near the Palace of the Luxembourg, April 4. On March 15 a well-known dynamiter named Pauwels was killed at the door of the Madeleine, in Paris, by the premature explosion of a bomb which he was carrying into the building, presumably for the purpose of setting it off among the worshipers. The building was but slightly damaged. — The police **in other countries** were kept particularly busy

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watching the movements of the Anarchists who were forced to fly from France and Spain. Many of the fugitives congregated in London, where attention was called to their presence by the accidental death of a Frenchman named Bourdin, who was blown to pieces by some explosives he was carrying in Greenwich Park, February 15. A police raid on an Anarchist club the following day resulted in the seizure of much literature and in the acquisition of considerable useful knowledge as to the general secret movement. In Italy, to which many agitators were attracted by the disturbances in the south, the most startling incident was an explosion, March 8, in front of the building where the Chamber of Deputies meets. Much damage was done to property, but no lives were lost. The Chamber had adjourned an hour before the explosion. Infernal machines sent from France to the German emperor and chancellor in the latter part of November were detected and disposed of without damage. — It was reported that during the winter some propositions were made by Spain and Austria looking to concerted action among the powers against the Anarchist movement, but that England and Germany declined to consider the matter.

GREAT BRITAIN AND IRELAND. — British politics during the period under review fall into two clearly distinguishable divisions, the first including the final work of what will probably prove to be the **last session of Parliament under Mr. Gladstone.** This session was in respect to duration unprecedented in the history of the institution, lasting, with but slight interruptions, from January 31, 1893, to March 5, 1894. The Parish Councils Bill and the Employers' Liability Bill were made by the government the chief business when, after a forty days' recess, the houses reassembled, November 2. Both measures were antagonized on important points by the opposition, who took advantage, moreover, of a popular "naval scare," in December, to harass the government and force it to promise a large appropriation for new ships. The Employers' Liability Bill was passed by the Commons November 23. Its provisions required from employers of labor additional precautions against accidents, and modified the law of responsibility so as better to secure compensation to employees who were injured. The chief point of contention was, whether employers who already had voluntary insurance arrangements with their workmen should be allowed to contract themselves out of the provisions of the bill. The House of Lords adopted the bill with a contracting-out amendment, which the Commons, December 20, rejected, and the matter thus came to a deadlock. The Parish Councils Bill (see this QUARTERLY, VIII, 389) passed its second reading in the Commons November 7, and was in committee till January 9, the Conservatives making a strong opposition to some features of the clauses which gave to the elective councils control in the poor-law administration and over charitable trusts and laborers' allotments. The bill passed the Commons finally on January 12. On February 13 the Lords passed it, with numerous amendments, the most important of which raised from 200 to 500 the minimum population to

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entitle a parish to an elective council, and put restrictions upon the councils' powers in many directions. The Commons now took up the Employers' Liability Bill, made a slight concession as to contracting out, and sent the bill again to the Lords. The latter persisted in their original amendment and returned the bill, whereupon Mr. Gladstone, on the 20th, urging that the working classes were set on having the measure without the contracting-out clause, announced that the government abandoned the bill. On the Parish Councils Bill the issue was different. Twice the Commons rejected amendments sent to it by the Lords, and each time the latter, mainly because the Liberal-Unionists declined to follow Lord Salisbury to extremes, modified their demands. Finally, when the bill was for the fourth time before the Commons, Mr. Gladstone, on March 1, accepted under protest the two final amendments of the Lords, in order to avoid the destruction of the bill, but accompanied his acceptance by a strong denunciation of the conduct of the upper house, declaring that "the issue is raised between a deliberative assembly, elected by the votes of seven million men, and a different kind of assembly. . . . That issue, once raised, must go forward to its issue." All through the month, during the conflict between the houses, the Liberals in the country had been assailing the Peers by resolution and declamation, and the Unionists had responded with demands for a dissolution. But a new incident now arose to direct attention. As early as January 31 a daily paper had announced the approaching **retirement of Mr. Gladstone.** An unsatisfactory denial was given out, and the rumors continued. At last, on the day of his speech against the Lords, an authoritative statement was published, to the effect that an affliction of the eyes (which was later learned to be cataract) would necessitate his withdrawal from the leadership in the coming session. On March 3 Mr. Gladstone formally resigned, declining a peerage, and Lord Rosebery was asked by the queen to form a ministry. Mr. Labouchere, for the Radical wing of the Liberals, protested very vigorously against the recognition of a peer as party leader, but he secured no important following. **The Rosebery cabinet** was the same in *personnel* as Mr. Gladstone's, though by a shifting of positions Lord Kimberley became foreign minister, Mr. Fowler became Indian secretary, and Mr. Shaw Lefevre, president of the local government board. Parliament was prorogued March 5. It reassembled for the new session March 12. The Queen's Speech announced a measure in reference to evicted tenants in Ireland, a Registration Bill, projects relating to ecclesiastical establishments in Wales and Scotland, and a Local Option Bill. The attitude of the Irish and Radical factions toward the new government, which depended on them for its majority in the Commons, attracted especial attention to the debate on the address. Lord Rosebery, in the House of Lords, declared himself in the fullest sympathy with home rule and all the other features of Mr. Gladstone's policy, but he excited much hostility among the Irish Nationalists by an expression which could be interpreted as implying a willingness to defer home rule until a majority

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of the English voters favored it. Before he had an opportunity to explain the expression, the Nationalists in the Commons inflicted a reverse on the government by supporting and carrying Mr. Labouchere's amendment to the address, calling for the termination of the power of the Lords to prevent the passage of bills. To avoid the predicament in which this amendment placed the government, Sir William Harcourt, the leader in the Commons, brought in a new address, which was duly adopted, the premier having meanwhile explained away the construction put on his words. On account of the uncertainty of the Radical and Parnellite attitude, the government's position remained rather delicate. During the latter half of April the great bills were introduced by which the factions were to be satisfied. These were the Registration Bill, April 13; the Evicted Tenants Bill, April 19; the bill for the disestablishment of the church in Wales, April 26; and the Scotch Local Government Bill, April 27. The Budget presented by Sir William Harcourt, April 16, showed a deficit of £4,500,000, which he proposed to meet by an increase in the income tax, a radical readjustment of the death duties, introducing the progressive principle, and an increase in the excise on spirits and on beer. The waning strength of Lord Rosebery's government was made quite apparent on the second reading of the Budget Bill, which was carried, May 10, by a majority of only fourteen. — **The end of the coal-miners' strike**, which was in progress at the beginning of this RECORD, was brought about at last through intervention by the government. On November 13, Mr. Gladstone announced that, in view of the increasing distress among the poorer classes and the serious injury to the country's trade which were due to the strike, he had invited the employers' and the miners' associations to a conference, under the chairmanship of Lord Rosebery. The chairman was not to act as arbitrator or umpire, or to have any vote, but was merely to "offer his good services" to assist the parties to a friendly settlement. The good services were effective; for after a single conference, November 17, including, as was particularly pointed out by cynics, a luncheon at the Foreign Office, an agreement was reached on this basis: The men should resume work at the old wages until February 1, 1894. After that date the rate should be fixed from time to time by a board of conciliation, composed of fourteen representatives of owners and miners respectively, the chairman of which, if not agreed upon by the two parties, should be appointed by the Speaker of the House of Commons. Under this arrangement work was resumed, amid general rejoicing, on the 20th.

THE BRITISH COLONIES AND INDIA. — The Canadian tariff became the chief topic of interest in the Dominion Parliament, which opened March 14. The governor-general's speech announced a revision of the schedules, and the details of the scheme were revealed in the budget speech of the finance minister on the 27th. It was declared that the government stood unflinchingly on the principle of protection, but felt that in view of the surplus in the treasury a reduction could in many cases be

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made. The proposed changes showed a general but slight reduction of rates, special favor being shown to the farmers. The government's program is opposed by the Liberal Party, who stand on the principle of a tariff for revenue only. A *plébiscite* on the desirability of legislative prohibition of the sale of intoxicating liquor has been taken in Ontario, in Prince Edward Island and in Nova Scotia. The result in each case was an enormous majority in the affirmative. The opinion of the supreme court of the Dominion on the Manitoba school case (see last RECORD) was rendered February 20. A majority of the court held that the acts of the Manitoba legislature gave no constitutional ground for an appeal to the Dominion government for remedial action in behalf of the Catholic minority. — **Politics in Newfoundland** have been of a rather exciting character. In the first place the British government has renewed, and in peremptory form, the demand that the colony enact the legislation necessary to ensure the enforcement of the arbitration treaty with France on the fisheries question (*cf.* this QUARTERLY, VII, 777). No action, however, has been taken. At the end of March a critical internal crisis developed. A decision of the courts was rendered which made it probable that rather more than half of the government's majority in the legislature would be disqualified from sitting, on account of corrupt practices in the election in November. As the governor declined to dissolve the house and appeal to the people, the cabinet resigned and a new ministry was constituted, April 14. The opposition then resorted to extraordinary measures to prevent prorogation, and passed a vote of no confidence. The governor, however, refused to recognize the vote, and proceeded to prorogue the house until the successive trials in the courts should disqualify enough of the opposition party to put their opponents in the majority. — **The financial situation in India** has continued to show the demoralizing effect of the closing of the mints last summer. Owing to the heavy falling off in the sale of council bills the Indian government was forced to use its borrowing powers extensively, and in December a resolution was passed in Parliament authorizing a further loan of £10,000,000. For the permanent relief of the Indian treasury, the reimposition of long discarded customs duties was proposed, and was sanctioned by the British government except as to the duties on cotton goods. This exception, due to the representations of Manchester mill owners, roused a violent and widespread opposition in India, where it was held that general Indian interests were being wantonly sacrificed to those of a few Englishmen.

FRANCE. — Parliament assembled November 14. The new Chamber of Deputies elected a Moderate Republican, M. Casimir-Périer, as its president, and on the 21st heard the government's program, which embodied a policy in fiscal, ecclesiastical and constitutional matters that amounted to a distinct declaration of war on the Radicals. But the Dupuy ministry was made up of both Radicals and Moderates, and this fact led to complications which necessitated the resignation of the ministry on the

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25th. **The cabinet crisis** lasted until December 2, when a ministry headed by Casimir-Périer was announced, consisting entirely of Moderates. The declaration of the new government on the 4th was similar to that of the preceding cabinet, but an attack by the Radicals and Socialists, through a motion for amnesty to political, press and strike offenders, was overcome by a small majority, and on the following day the Moderates elected M. Dupuy as president of the Chamber by a somewhat larger majority over his Radical opponent. The excitement caused by the bomb explosion in the Chamber gave the government for a time a very strong position in respect to the numerous Socialist attacks. The laws prohibiting Anarchistic societies and the manufacture of explosives, restricting the press and making increased appropriations for the police were passed in December and January by overwhelming majorities, despite the Socialist complaints of encroachments on liberty. On an interpellation on the conduct of the police in hunting down the Anarchists, the government was sustained, January 27, by 408 to 64. A significant speech by M. Spuller, Minister of Public Worship, on the 3d of March, illustrated the tendency of the Moderates to accept the advances of the Pope and to separate widely from the Radicals on the question of **state and church**. Speaking on an interpellation in reference to a decree of the mayor of St. Denis forbidding the placing of a cross on a grave, M. Spuller declared that the government entirely repudiated all petty warfare on the church and stood on the principle of toleration, which it would apply in "a new spirit." In replying to Radical criticism of this expression, the minister regretted the passion which had characterized the Republican Party's treatment of ecclesiastical questions a decade in the past, and in which he himself had shared, and declared that since the church had accepted the republic, a new policy was needed and should be frankly adopted. On the vote the government's position was sustained by 280 to 120. — The most important **legislation completed** up to the end of this RECORD was: The conversion of 4½ per cent into 3½ per cent *rentes*, effecting a saving of 68,000,000 francs annually; the establishment of a Ministry for the Colonies, to give more authority to the officer of the government charged with responsibility for colonial affairs. The budget introduced by M. Burdeau on April 16 showed a deficit of 83,000,000 francs. This he proposed to cover partly by a house tax, assessed on the basis of the old furniture tax and a new tax on domestic servants, and carrying exemptions proportioned to the number of children under sixteen years of age.

GERMANY. — Political interest has centered chiefly in the work of the Reichstag, which was in session from November 16 to April 19. The two great objects of the government's effort were to secure the legislature's approval of its new commercial treaties and of its projected financial reforms. As to **the commercial treaties**, Chancellor von Caprivi was entirely successful. Though strongly opposed by the agrarian Conservatives, the treaties with Spain, Roumania and Servia were ratified, December 15,

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by a substantial majority. The conflict over the Russian treaty, which came before the Reichstag at the end of February, was rather more severe, but the emperor threw all his influence in support of the measure, and it was carried March 16, the majority of about fifty consisting chiefly of National Liberals, Centrists, Radicals of both factions and Social-Democrats. A treaty with Uruguay was likewise ratified in April. It was generally regarded as a bid for Centrist support in these treaties that the government, without taking position on either side, allowed the second reading, December 1, of a bill permitting the entrance of the Jesuits into Germany. The vote was 176 to 136, party lines being generally disregarded, except by the Centrists. The bill passed its third reading in April, but has not yet been adopted in the Bundesrath. — In respect to **the government's financial measures**, Minister Miquel was not as successful as was Caprivi with the commercial treaties. The measures proposed included an increase of the stamp taxes on bourse transactions and new taxes on tobacco and wine. Of these the wine and tobacco taxes were voted down in the Reichstag's committee, and only the bourse tax was passed. On these financial bills the government is opposed by the Center and can only succeed through support by the Conservatives, who were alienated by the commercial treaties. The bourse tax drew the support of the anti-Semitic Conservatives, as chiefly affecting the Jewish financial operators. The government showed a desire to devise means to placate the agrarian Conservatives before introducing the measures again. It was regarded as a step in this direction that a Currency Commission consisting of experts was brought together by the government, February 22, to consider plans for raising and maintaining the price of silver. A demand for bimetallism has been taken up by some of the Agrarians. — The elections in November for **the Prussian Landtag** resulted in the customary majority for the Conservatives. The session of this body opened January 16. The royal speech announced an increased deficit in the treasury, due to the greater army expenditures. With an obvious reference to agrarian discontent, a measure was foreshadowed looking to the establishment of chambers of agriculture in the rural regions, with power to promote the interests of the landowners and cultivators. The proceedings of the Landtag up to the close of the RECORD were marked by the rejection of a number of government projects by the Conservative majority, in revenge for the disregard of agrarian demands in the Reichstag. — **The reconciliation of Bismarck and the emperor** was signalized by a visit of the ex-chancellor to his sovereign at Berlin, January 26. The overture was made on this occasion, as on that noticed in the last RECORD, by the emperor, and proved more successful than before. Bismarck traveled from Friedrichsruh to Berlin, spent a few hours at the palace, and returned home in the evening. The whole incident was attended by manifestations of the utmost interest and extravagant enthusiasm among all classes of the people. Political significance was attributed to the reconciliation only as it might aid the government in

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securing the ratification of the Russian treaty, through Bismarck's well-known sympathy at the same time for Russia and for the Conservatives.

AUSTRIA-HUNGARY. — **The Windischgrätz coalition ministry** met the reassembled Reichsrath, November 23, with a program in which electoral reform, with extension of the franchise, held the first place, and which promised a continuance of the currency reform initiated by the preceding ministry, as well as a progressive policy on social questions. The ministry held its majority well on the question of approving the state of siege in Prague and on the budget and routine business that occupied the winter. Early in March its Electoral Bill was published. This extends the franchise by giving a vote to all who have for two years contributed to a workingmen's insurance fund. But to prevent the swamping of the higher classes by the workingmen thus enfranchised, a new *curia* is provided for, into which the new voters will fall, and which is entitled to choose 43 delegates to the Reichsrath. The existing *curiae* are (1) the great landowners, 85 delegates, (2) the towns, 48 delegates, (3) the chambers of commerce, 21 delegates, and (4) the rural communes, 129 delegates. This ministerial project is favorable to the middle classes, and is supported by the German-Liberals and the Polish group. The Conservatives have formulated a counter-project, designed to give especial advantages to the great landowners. — **In Bohemia** the government maintained order with a strong hand. The murder of an Anarchistic agitator named Mrva, in December, led to the discovery by the police of an extensive secret society, known as the Omladina, whose political and social projects were related both to the Young Czech movement for national autonomy in Bohemia and to the general revolutionary propaganda of the extreme Socialists and the Anarchists. Mrva was the founder of the Omladina, and was murdered under suspicion of having betrayed its members to the police. Seventy-seven persons, mostly students and other young men, were tried at Prague for complicity in the Omladina's plots, and most were convicted in February and sentenced to various terms of imprisonment. — **The Civil Marriage Bill** for Hungary, having received, after long delay, the king's approval, was introduced in the parliament December 2. It makes the civil ceremony the only legal marriage, and imposes severe penalties on clergymen who perform the religious ceremony before the civil. An accompanying bill, relating to mixed marriages, provides that the children shall follow the religion of the father unless a different arrangement is agreed upon before the ceremony. In spite of some disaffection among the Liberal supporters of the ministry and strong opposition from the Catholic clergy and their followers, Premier Wekerle was sustained by a vigorous public sentiment, and seemed certain of success with the bills up to the middle of March. A diversion was then effected by his enemies in connection with **the death of Kossuth**, in Turin, March 20. The Nationalists and Radicals immediately sought to force the government to a thorough-going eulogy of the dead patriot. A very moderately-worded tribute to his memory,

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however, was carried in parliament and an official funeral was refused. Students and other disorderly persons, meanwhile, indulged for several days in very riotous proceedings in Budapest to enforce what they deemed a proper degree of mourning, and the troops had to be brought into use. It was arranged to bring Kossuth's body to Budapest for a public funeral, but his sons on March 24 sent word that this arrangement would not be carried out unless the rioting ceased. Order was then quickly restored. On the 30th the body reached the Hungarian capital, and was received with an orderly but most impressive popular demonstration, in which no government official took any part. The general effect of this affair was apparently a distinct loss of strength to the government, whose position had obliged it to run counter to a profound public sentiment. It was, therefore, a matter of great surprise even to the ministry when its Civil Marriage Bill passed the lower house, April 18, by a majority of 175. The further steps in this house were correspondingly easy, and the bill went to the House of Magnates at the end of April. Here, however, the ministry's path became more difficult, and the bill was rejected, May 10, by a majority of 21. — By a royal ordinance of November 26, a more definite recognition of Hungary's autonomous position was given through the provision that the immediate court service of the monarch, in whatever concerns Hungarian affairs, should be attended to by Hungarian instead of by Austrian officials. This in effect established a distinct Hungarian court.

ITALY. — The whole period under review has been for Italy a time of social and political crisis. At the beginning of November attention became attracted to continual outbreaks of violence among the working classes in Sicily, due to discontent with employers and with the local governmental authorities. At the same time a great decline in Italian funds on the European bourses indicated a general despair of the nation's finances. The assembling of Parliament, November 23, was followed on the next day by the **fall of the Giolitti ministry,** caused by the report of the Parliamentary commission on the bank scandals (*cf.* this QUARTERLY, VIII, 396). This report made the most serious revelations as to the connection of deputies with the *Banca Romana*, and reflected severely on Giolitti and other ministers, as having concealed the frauds after they had become known to the government officials. The formation of a new cabinet, under the very threatening social and financial conditions, proved too difficult for Zanardelli, after two weeks of effort, and on December 8 the king summoned Crispi, who was universally recognized as the strongest politician available. Crispi appealed to the various group leaders in the Chamber for a cessation of party conflict while the country's condition was so critical, and with some understanding in this sense, he announced his cabinet December 15. Parliament, however, was immediately adjourned, to give the government time to deal with the Sicilian situation and frame its financial program. **The commotions in Sicily** had meanwhile been increasing in magnitude, with some evidence of socialistic influences in the organization of the dis-

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turbers. An association called *Fasci dei Lavoratori*, numbering several hundred thousand members, appeared connected with the movement. In the middle of December uprisings of peasants against the communal taxes began in different places, and conflicts with the troops were frequent and bloody. By the end of the month the whole island appeared likely to be in insurrection, and the government, early in January, proceeded to extreme measures. Troops were hurried over in great masses from the mainland, the state of siege was proclaimed, the leaders of the *Fasci dei Lavoratori*, including a Socialist deputy, were seized and order was maintained with a strong hand. At the same time the government issued decrees affording a measure of relief to the poorer classes, whose miserable plight in many cases was conceded by all. On the 16th of January the government was obliged to proclaim the state of siege in Tuscany, at Massa di Carrara, where workingmen had developed very strong Anarchistic tendencies. Not till February 20 did Parliament again assemble. Then Crispi faced the Chamber with a defense of the employment of martial law in Sicily and Italy, and with a declaration of financial policy. As to the first point, he laid before the deputies evidence obtained by the police that a fully matured plot had existed for the revolutionizing of Sicily, and that the Anarchists who had formed it had craftily utilized the discontent and distress of the peasants to promote their design. The Chamber sustained the government's course by 342 to 45. The ministry's financial program, as announced on February 21 by Signor Sonnino, was received with less enthusiasm. He frankly put the deficit for the current year at 177,000,000 lire, far above all previous estimates. Forty-five millions he undertook to provide for by economies in administration, and a hundred millions by increase of taxation; this latter to include a revived land tax, a new general income tax, and considerable advances in the rates on personal property, salt, inheritances and alcohol. Several operations in debt conversion also were proposed. Finally, the government's *octroi* taxes on meal, bread, *etc.*, were to be abolished, and the import duties on grain proportionately increased. This latter arrangement was designed to remove as far as possible the principal grievance of the peasants, while at the same time giving additional protection to the agricultural class. These propositions of the government were referred to a committee, who suggested modifications looking to considerable reductions in the army and navy. Here Crispi stood very firm, and announced in April that he would appeal to the electors rather than consent to any such change. His position was regarded as particularly strong from the fact that, after the revelations in connection with the bank scandals, very many deputies are exceedingly unwilling to face their constituents. At the end of the month some small concessions were made by the minister of war, and up to the close of the RECORD the government had met with no reverse. — The trial of the directors of the *Banca Romana* on criminal charges began May 2. One plea of the defense was that the missing funds had been used to assist

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the government in sustaining the price of Italian *rentes* in the European bourses.

SPAIN. — Outside of the trouble with the Anarchists and with Morocco, mentioned elsewhere in this RECORD, Spanish affairs have presented little of special interest. A negotiation between the finance minister and representatives of the Basque Provinces resulted, in February, in an agreement, to run for thirteen years, under which the Basque contributions in lieu of taxes were increased about a million pesetas, and the provinces were secured in their ancient rights of self-government. — A reorganization of the Sagasta ministry was effected on March 12, having been necessitated by disagreements on financial subjects in the old cabinet. — A considerable sensation was caused, April 10, by the formal withdrawal of Señor Castelar from the Republican group in the Cortes, to unite himself with the monarchists. This act is recognized as very disastrous to Republican hopes, as Castelar wields a great influence.

MINOR EUROPEAN STATES. — In **Belgium**, the Beernaert ministry, after ten years of power, and after successfully carrying through the revision of the constitution, came to grief finally on a project through which it sought to qualify the democratic tendencies of the new constitution by the principle of proportional representation. The cabinet resigned March 19, and the de Burlet government, which succeeded to power, withdrew the disputed bill, but roused much antagonism at the same time by proposing a customs duty on grain. — The Radical majority in **the Norwegian Storthing** greeted the Conservative ministry, at the opening of the session in March, with the now usual vote of no confidence, but the ministry proceeded to carry on the necessary business without much reference to the protests of the house. — On April 1. the Danish budget was regularly voted by the Folkething for the first time in ten years. Owing to an obstinate party conflict throughout that period the finances of the kingdom have been administered under "provisional" laws, unsanctioned by the popular branch of the legislature. Having seen the conclusion of the difficulty, Premier Estrup retired from his position shortly after. — **A critical condition in Servia** has characterized the whole period under review. King Alexander's relations with the Radicals, in whose behalf he had made his *coup d'état*, became very much strained by the time the Skupshtina assembled in the latter part of November. Premier Dokitch, the king's closest counselor, was succeeded the first of December by General Gruitch, and shortly afterwards died. The Radical majority in the legislature strongly demanded a policy of hostility to Austria, especially in commercial matters, a vindictive prosecution of the former Liberal ministers who were under impeachment, and the distribution of arms to the militia, as an offset to the standing army of the king. As the government took an attitude of opposition to all their demands, the Radical extremists, especially the Karageorgiewitch element, manifested a pronounced tendency toward insurrection. While things were in this condition, ex-King Milan,

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who had definitely abandoned the country (see this QUARTERLY, VI, 399), suddenly appeared in Belgrade, January 21, to thwart, as he explained, the plots against his son and his dynasty. The Gruitch ministry hastily tendered its resignation upon news of the ex-king's arrival. Milan and Alexander, after trying in vain to gain pledges of good conduct from the Radical leaders, prorogued the legislature and effected the formation of a non-partisan cabinet under M. Simitch. The impeachment proceedings against the former Liberal ministers were discontinued at the end of January. Radical hostility to the new ministry is pronounced, and the prospect of a satisfactory organization of the disordered finances of the kingdom is poor, since the peasants, who form the bulk of the Radical party, have long used their political power to evade the payment of their taxes, and show no tendency to adopt any other policy. A new cabinet crisis, early in April, brought into power M. Nikolaiewitch, whose character and views give promise of a vigorous and unrelenting policy against the Radicals. He is a particular supporter of ex-King Milan. On April 27 King Alexander issued a decree annulling, as unconstitutional, the measures of the former government against Milan and Natalie, and proposed to make the former regent during a projected tour abroad. But on May 5 the Court of Cassation declared the royal decree illegal. — M. Tricoupis came again into power at the assembling of the Parliament, November 8, but only to announce **the bankruptcy of Greece.** The public statement was made, November 26, that the bonds falling due could not be paid, and that the interest could only be met to the extent of thirty per cent. In the budget for 1894, as presented in January, there was prospect of very little improvement over this situation, but the government promised to do the best it could to give fuller satisfaction to its creditors, most of whom are foreign.

AFRICA. — The friction between British and native authorities in **Egypt** has again manifested itself in a number of incidents (*cf.* this QUARTERLY, VIII, 399). Most conspicuous was that in the middle of January, when the Khedive, after reviewing the frontier army, made criticisms upon it that prompted the English commander to tender his resignation. The British minister, Lord Cromer, thereupon very quickly forced the Khedive to proclaim publicly his entire confidence in the army, especially in the English officers, and to remove from office the native official who had inspired the criticisms. Owing to differences with the Khedive, arising apparently out of the strong anti-British tendencies of the latter, Riaz Pasha and his cabinet resigned April 14, and were succeeded by a ministry headed by Nubar Pasha. A continuance of the excellent financial conditions that have characterized the years of British administration, is indicated by a surplus for the last year of £739,000. The savings of four years now amount to £3,239,000, which lie idle in the treasury, owing to the failure of the great powers to agree upon a method of utilizing the money. Taxation has been reduced by over a million pounds yearly. — The British South Africa

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Company's **conquest of the Matabele** was fully completed by Christmas. On only two occasions did Lobengula's warriors venture a pitched battle with the invading forces, and both times the machine guns of the British put the natives to flight with enormous slaughter. The only serious casualty on the British side was the loss of a company of thirty men, who, in hot pursuit of King Lobengula, became separated from the main army, and were surrounded and all slain by the natives. Lobengula was not captured, but is reported to have died of disease. His subjects generally made their submissions during the winter, and their land was put under the administration of the British company's officials. — On the recommendation of Sir Gerald Portal, who went as commissioner to investigate the situation in **Uganda**, the British government declared a protectorate over that region in April. Hostilities broke out in March with the neighboring kingdom of Unyoro, which will probably be brought within the sphere of the protectorate. — **Spain's difficulty with the Riff tribes** at Mellila in Morocco has been adjusted without far-reaching war. Very active hostilities continued around the town until near the end of November, and Spanish forces were moved over until some 25,000 were on the ground. Then, however, Muley Araaf, the brother of the Sultan of Morocco, succeeded in restraining the warlike proceedings of the natives, and in December he effected a truce through an arrangement with General Martinez-Campos, who had taken command of the Spanish forces. By the end of December the Riff chiefs had given in their formal submissions, and after negotiations with the Sultan of Morocco, Spain secured in March a treaty giving her an indemnity of 20,000,000 pesetas, on the security of the revenues of four Moorish custom ports. Morocco also engaged to punish the ringleaders in the Mellila uprising. — **France's interests** in Africa have been promoted, first, by the final capture, January 25, of the deposed Dahomeyan king, Behanzin, who surrendered unconditionally and was exiled to the island of Martinique; and second, by the occupation of Timbuctoo, the famous town of the Western Soudan, by a French force that had been operating against the wild tribes of the neighborhood. Though this occupancy was without instructions from the home government, and though a part of the occupying force, with the commander, was destroyed shortly after by the Tuaregs of the vicinity, the French have retained possession of the town, with the sanction of the Paris cabinet. — Through agreements reached by Germany with England and France in November and March respectively, the more exact delimitation of spheres of influence in the *Hinterland* of the Cameroons settlements was finally reached. The chief questions involved touched the trading advantages in the neighborhood of Lake Tchad. — The war against **the Congo State** which, in spite of repeated defeats, the Arabs of the upper Congo and Tanganyika regions have persisted in maintaining for two years, was brought one step nearer a conclusion by another victory for the Europeans, November 17, in which Sefu, the son of Tippoo Tib and a prominent leader in the war, lost his life. In January a succession of

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defeats broke the power of Rumaliza, the most powerful Arab chief remaining in the Tanganyika region.

LATIN AMERICA. — **The civil war in Brazil** resulted in the complete triumph of the Peixoto government in the spring. During November the insurgents held their own in the harbor of Rio Janeiro, and in the following month occupied a number of islands in the bay. On December 1 Admiral Mello, their leader, with two of his ships, ran past the government batteries and out to sea, leaving in command in the harbor Admiral da Gama, who up to that time had remained neutral. The latter shortly after issued a manifesto pointing to a restoration of the monarchy as the ultimate purpose of the rebels. This seems to have tended rather to weaken the insurgent cause, and a month later da Gama tried in another proclamation to explain away the interpretation that had been put upon the first. The government, meanwhile, confined itself to strengthening its positions in the city and along the shore so as to make any attempt to land unsuccessful. Desultory hostilities continued throughout December and January, incidentally to which the American commander on one occasion enforced respect for merchant vessels bearing his flag by firing on an insurgent vessel. On February 12 da Gama made his most elaborate attempt to gain a foothold on the main land at Armacao, but was repulsed with severe losses. By this time the insurgent cause was clearly on the decline. On the first of March a presidential election was held, which resulted in the choice of Prudente Moraes, a civilian. This removed the leading grievance of the rebels, that Peixoto was perpetuating a régime of pure militarism. On the 11th of March the fleet which the government had been fitting out in the United States and Europe appeared at the entrance to the harbor of Rio, and Peixoto gave notice of an active movement against the rebels. Da Gama promptly offered to surrender on certain conditions, which being refused, he and his officers sought asylum on first a French and later a Portuguese war vessel. Thus deserted, the crews of the insurgent vessels surrendered without resistance when the government batteries opened fire on the 13th. Admiral Mello, meanwhile, had been operating with some success in connection with the insurgents on land in the southern states of Brazil. In the first part of April, however, the government forces totally defeated the rebels in Rio Grande do Sul, and Mello, about the middle of the month, surrendered himself and his command to the Uruguayan authorities, by whom they were disarmed. About the same time da Gama reached Buenos Ayres in the Portuguese war ship. — The chief event in Central America has been a war between Honduras and Nicaragua, due to the support given by the latter to revolutionists exiled from the former. Hostilities broke out in December, and ended in February in the triumph of the Nicaraguans, who established in power in Honduras the long unsuccessful revolutionist, Bonilla.

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